

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

**OA NO. 176 of 2020 (SZ)
OA No. 167 of 2020(SZ)
OA No. 22 of 2021 (SZ)
OA No. 118 of 2021(SZ)
OA No. 146 of 2021 (SZ)**

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Dated at Chennai on this the 14th day of September, 2021.

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M/s. ABDUL SALEEM

S.SARAVANAN

COUNSEL FOR THE OIL MARKETING COMPANIES

No.74 & 76, II & III Floors,
Sukh Sagar Buildings, Marshalls road,
Egmore, chennai – 600 008, Tamil Nadu
Mobile:- +91-9500069660
E-mail: saleemattorney@gmail.com

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
01.10.2019	17.10.2019

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

and

W.M.P.(MD) Nos.15599, 15601, 15866, 2006, 2007, 2890, 2891, 2892,
3678, 603, 604 & 605 of 2019

W.P.(MD) No.19218 of 2019:

Durairaj Venkatachalam

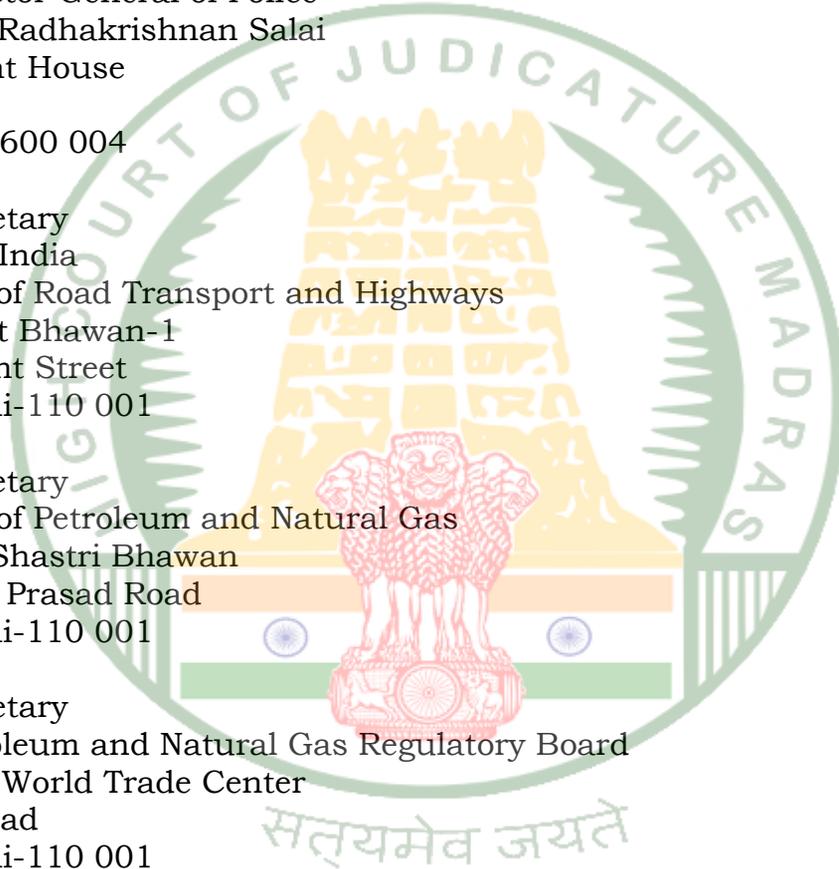
... Petitioner

सत्यमेव जयते
-vs-

1.The Additional Chief Secretary
Revenue and Disaster Management Department
Fort. St.George
Secretariat
Chennai-600 009

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

- 2.The Principal Secretary
Highways and Minor Ports Department
Fort. St.George, Secretariat
Chennai-600 009
- 3.The Director General of Police
No.1, Dr.Radhakrishnan Salai
Near Light House
Mylapore
Chennai-600 004
- 4.The Secretary
Union of India
Ministry of Road Transport and Highways
Transport Bhawan-1
Parliament Street
New Delhi-110 001
- 5.The Secretary
Ministry of Petroleum and Natural Gas
A-Wing, Shastri Bhawan
Rajendra Prasad Road
New Delhi-110 001
- 6.The Secretary
The Petroleum and Natural Gas Regulatory Board
1st Floor, World Trade Center
Babar Road
New Delhi-110 001
- 7.The Chairman
Central Pollution Board
Ministry of Environment,
Forest and Climate Change
Parivesh Bhawan
East Arjun Nagar
New Delhi-110 032



W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

8.The Chairman

Indian Oil Corporation Ltd.,
G-9, Indian Oil Bhawan
Aliyavar Jung Marg
Bandra East
Mumbai-400 051

9.The Chairman

Bharat Petroleum Corporation Ltd.,
Bharat Bhawan
4 & 6 Currimbhoy Road
Balad Estate
Mumbai-400 001

10.The Chairman

Hindustan Petroleum Corporation Ltd.,
Petroleum House
No.17, Jamshedji Tata Road
Mumbai-400 020

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records of the 3 Nos. of Tender Notices dated 25.11.2018 published by the respondents 8 to 10 calling for applications for the allotment of 5125 nos. of new Petroleum Retail Outlets in Tamilnadu in violation of Articles 14 and 21 of the Constitution of India and to quash the same and consequently to forbear the Respondents 8 to 10 from proceeding in any manner to select and appoint new Petroleum Retail Outlets in Tamil Nadu pursuant to the 3 Nos. of above Tender Notices dated 25.11.2018.

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W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

For Petitioner : Mr.V.B.R.Memon

For Respondents : Mr.A.Muthukaruppan
 Additional Government Pleader for R1 to R3
 Mr.R.Vijaya Rajan
 Central Government Standing Counsel for R4 to R6
 Mr.Vasantha Kumar for R7
 Mr.S.Parthasarathy, Senior Counsel
 for Mr.K.Muralidharan for R8
 Mr.S.Natesh Rajan for R9
 Mr.M.Sridharan for R10

W.P.(MD) No.2661 of 2019:

P.Ayyakannu

Petitioner

-vs-

1. Union of India
 By its Secretary
 Ministry of Petroleum and Natural Gas
 A-Wing, Shastri Bhawan
 Rajendra Prasad Road
 New Delhi-11000
2. Union of India
 By its Secretary
 Ministry of Forest and Environment
 New Delhi
3. The Petroleum and Natural Gas Regulatory Board
 By its Secretary
 1st Floor, World Trade Center
 Babar Road
 New Delhi-110 001

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

4.The Government of Tamil Nadu
By its Secretary
Department of Revenue
Secretariat
Chennai

5.The Indian Oil Corporation
By its Managing Director
G-9, Aliyavar Jung Marg
Bandra East
Mumbai-400 051

6.Bharat Petroleum
By its Chairman
Bharat Bhawan
4 & 6 Currimbhoy Road
Balad Estate
Mumbai-400 001

7.Hindustan Petroleum Corporation
By its Chairman
Petroleum House
17, Jamshed Ji Tata Road
Mumbai
Maharashtra-400 020

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records of the advertisement dated 24.11.2018 issued by 5th respondent for opening retail outlets and quash the same as illegal and fore-bearing the respondent from opening the outlets as per the above advertisement.

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

For Petitioner : Ms.S.Mahalakshmi

For Respondents : Mr.R.Vijaya Rajan
Central Government Standing Counsel for R1 to R3
Mr.A.Muthukaruppan
Additional Government Pleader for R4
Mr.S.Parthasarathy, Senior Counsel
for Mr.K.Muralidharan for R5
Mr.S.Natesh Rajan for R6
Mr.M.Sridharan for R7

W.P.(MD) No.3678 of 2019:

Venkidusamy.V

Petitioner

-vs-

- 1.Union of India
Rep.by The Secretary
Ministry of Petroleum and Natural Gas
A-Wing, Shastri Bhawan
Rajendra Prasad Road
New Delhi-110 001
- 2.The Government of Tamil Nadu
Rep.by The Secretary
Revenue and Disaster Management Department
Fort.St.George
Secretariat
Chennai-600 009
- 3.The Principal Secretary / Chairman
Tamilnadu Pollution Control Board
No.76, Mount Salai
Guindy, Chennai-600 032

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

4.The Joint Chief Controller of Explosives

A and D Wing, Block 1-8
Shastri Bhavan
No.26, Haddows Road
Nungambakkam
Chennai-600 006

5.Indian Oil Corporation Ltd.,

Rep.by it's Chairman
G-9, Indian Oil Bhawan
Aliyavar Jung Marg
Bandra East
Mumbai-400 051

6.Bharat Petroleum Corporation Ltd.,

Rep.by it's Chairman & Managing Director
Bharat Bhawan
4 & 6 Currimbhoy Road
Balad Estate
Mumbai-400 001

7.Hindustan Petroleum Corporation Ltd.,

rep.by it's Chairman and Managing Director
Petroleum House
No.17, Jamshedji Tata Road
Mumbai-400 020

8.Petroleum Dealers Association

Trichy Region (Regn.No.126/1998)

Through its Secretary

C4, Jenne Plaza
No.5, Bharathiyar Salai
Cantonment
Trichy

[R8 impleaded vide order dated 05.08.2019
in W.M.P.(MD) No.12930 of 2019]

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

9.S.Preetha

10.R.Santhi

11.D.Rajmohan

12.R.Nalini

13.D.Subathradevi

... Respondents

[R9 to R13 are impleaded vide order dated
05.08.2019 in W.M.P.(MD) No.13690 of 2019
in W.P.(MD) No.3678 of 2019]

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records of the 3 Nos. of Tender Notices dated 25.11.2018 published by the Respondents 5 to 7 in their websites and in The Hindu and The Times of India calling for applications for the allotment of 5125 nos. of new Regular / Rural Petroleum Retail Outlets in Tamilnadu and to quash the same as arbitrary, whimsical, unreasonable, injurious to public health and hence violative of Articles 14 and 21 of the Constitution of India and consequently to forbear the respondents from proceeding in any manner including allotment of Letters of Intent (LOI) and No Objection Certificates (NOC) to the Applicants pursuant to the 3 Nos. of Tender Notices dated 25.11.2018.

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

For Petitioner : Mr.V.B.R.Menon

For Respondents : Mr.R.Vijaya Rajan
 Central Government Standing Counsel for R1
 Mr.A.Muthukaruppan
 Additional Government Pleader for R2
 Mr.V.Vasantha Kumar for R3
 Mr.S.Parthasarathy, Senior Counsel
 for Mr.K.Muralidharan for R5
 Mr.S.Natesh Raja for R6
 Mr.M.Sridharan for R7
 Mr.S.Anand Chandrasekar for R8
 Mr.T.Lajapathy Roy for R9 to R13

W.P.(MD) No.705 of 2019:

Jamunarani

... Petitioner

-vs-

- 1.The Government of India
 represented through its under Secretary
 Ministry of Petroleum & Natural Gas
 Shashtri Bhawan
 New Delhi-110 001
- 2.The Government of India
 Represented through its under Secretary
 Ministry of Woman and Child Development
 New Delhi-110 001
- 3.M/s.Bharat Petroleum Corporation Ltd.,
 35, Vaidyanathan Street
 Tondiarpet
 Chennai-81

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

4.M/s.Indian Oil Corporation
500, Anna Salai
Tenampet
Chennai-18

5.M/s.Hindustan Petroleum Corporation
2nd Floor, New No.82, TTK Road
Alwarpet
Chennai-600 018

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to Impugned (Advertisement) Notice for Appointment Regular / Rural Retail Outlet (Petrol Pump) Dealerships at various location in State of Tamil Nadu and Union Territory of Puducherry dated 25.11.2018 and its Brochure dated 24.11.2018 of the respondents 3 to 5 and quash the same and consequently direct the respondents to follow the Women (Reservation in Services) Act, 2016, the instruction given by under Secretary to Government dated 06.04.2011 and the Office Memorandum – Guidelines of 1st Respondent dated 09.10.2000 for selection of the retail outlets dealers and to allot available vacant places for schedule caste and further to consider the present sale in outlets in fixing the number of new outlets.

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

For Petitioner : Mr.T.S.Mohamed Mohideen

For Respondents : Mr.R.Vijaya Rajan
Central Government Standing Counsel for R1 & R2
Mr.S.Natesh Rajan for R3
Mr.S.Parthasarathy, Senior Counsel
for Mr.K.Muralidharan for R4
Mr.M.Sridharan for R5

COMMON ORDER

T.S.SIVAGNANAM, J.

All these four writ petitions have been filed as public interest litigations. Though the writ petitions have varied prayers, the challenge in all these writ petitions is to the tender notice issued by the Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited, Hindustan Petroleum Corporation Limited (hereinafter, referred to as “the Oil Corporations”).

2. By the impugned tender notifications dated 25.11.2018, the Oil Corporations notified that they proposed to appoint retail outlet dealers at various locations in the State of Tamil Nadu and Union Territory of Puducherry. The details of the locations and conditions, which are required to be satisfied by the applicants, have been mentioned in the Brochure, which was published in the website of the Oil Corporations.

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

3. For the purpose of disposal of these writ petitions, we take up W.P.(MD) No.19218 of 2019 as the lead case.

4. The petitioner one Mr.Durairaj Venkatachalam, is a resident of Srirangam in Tiruchirappalli District. He would state that he had applied and paid a sum of Rs.10,000/- towards application fee for grant of a delership in response to the advertisement issued by Hindustan Petroleum Corporation Limited, for setting up a petroleum retail outlet between KM298 and 304 on NH-38. The said advertisement was challenged before this Court in W.P.(MD) No.2687 of 2019 and the same was set aside by order dated 12.02.2019.

5. The petitioner would further state that though the tender was cancelled, the Oil Corporation has not refunded the application fee paid by him. He would submit that all these prompted him to conduct a detailed study about the conduct and attitude of the Oil Corporations, which according to the petitioner, is an act of unjust enrichment at the cost of gullible applicants. The petitioner would further state that the total number of new petroleum retail outlets proposed to be set up in Tamil Nadu, as advertised by the Oil Corporations in the impugned notifications, is 5125 and about 50% of

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the locations, for which new retail outlets have been advertised, have less than the minimum plot size requirement as prescribed by the Ministry of Road Transport & Highways vide Circular dated 24.07.2013 and Circular No. 12:2009 of the Indian Roads Congress. Further, it is submitted that the plots offered by the new applicants may also involve violation of the mandatory provisions of those Circulars, which may result in denial of No Objection Certificate (NOC) or subsequent cancellation of allotments with consequential financial loss to the applicants.

6. It is further submitted that neither in the affidavit nor in the Brochure, the Oil Corporations have mentioned about the critical / mandatory factors, which are to be fulfilled to obtain No Objection Certificate, Explosive License and other statutory approvals for the sites offered by the applicants. Referring to Clause 14H of the Brochure, it is submitted that the Land Evaluation Committee considers only four parameters, namely, the land is in advertised area, land dimensions are as per advertisement, land meets NHAI / NH norms and land has no high tension line (11 KVA) crossing. It is further submitted that National Green Tribunal, in its order dated 28.09.2018, in O.A.No.147 of 2016 and the order dated 01.04.2019 in O.A.Nos.31 and 86 of 2019, directed the Oil Corporations to install Vapour Recovery Systems (VRS)

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in all their existing petroleum retail outlets and this has been notified and given wide publicity by the Central Pollution Control Board (CPCB). It is submitted that the impugned advertisement does not mention about the requirement to install Vapour Recovery Systems (VRS) for the proposed petroleum retail outlets.

7. It is further submitted that the proposal to open 5125 new petroleum retail outlets would amount to doubling the existing number of retail outlets in a short span of time and such a decision is without any rational basis or valid justification. It is further submitted that the Indian Roads Congress has issued guidelines for the access, location and layout of roadside fuel stations and service stations vide Circular No.IRC:12-2009. A writ petition was filed by the learned counsel for the petitioner appearing in person praying for a direction upon the official respondents both State and Central Government to comply with the guidelines issued by the Indian Roads Congress for site approvals, in W.P.No.691 of 2017. The Division Bench, by order dated 18.01.2019, took note of the memo filed by the petitioner therein, dated 05.04.2018, wherein the Chief Engineer of Construction and Maintenance of Highways Department of the State has clarified that for issuance of No Objection Certificate for roadside petroleum retail outlets by Oil

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Marketing Companies or any other Agencies in respect of Government Highways Roads, other District roads, the guidelines issued by the Indian Roads Congress in IRC:12-2009 shall be strictly followed. It is submitted that the said memo was recorded, while disposing of the writ petition. However, no guidelines or directions have been issued by the State Government to the District Authorities to comply with the said circular.

8. It is further submitted that it is necessary to maintain a minimum distance of 100 meters between the petroleum retail outlets and public buildings to avoid / minimize the health hazards associated with the operation of such retail outlets. It is submitted that in W.P.No.23546 of 2017, the Court had directed to formulate appropriate guidelines and standards for locating petroleum retail outlets in the vicinity of public buildings, such as, Schools, Hospitals, Shopping Malls etc. However, till date, the Government of Tamil Nadu is yet to formulate any guidelines and yet to issue any directions. Reference has been made to Clause 4 of the Indian Roads Congress, which prescribes the minimum plot size and these guidelines have been violated by the respondent Oil Corporations, while issuing the impugned advertisement.

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

9. Mr.V.B.R.Menon, learned counsel appearing for the petitioners in W.P.(MD) Nos.19218 and 3678 of 2019, has filed written arguments and the contentions raised therein are summarized as follows:

- (i) The petitioners have no intention to support or protect the business interests of any existing retail outlets. But, they are concerned about the possibility of excessive / unhealthy competition among the petroleum dealers due to the sudden increase in the number of retail outlets.
- (ii) The petitioners have no objection for the expansion scheme, provided such proposals are based on scientific and transparent criteria.
- (iii) It is not disputed that the Oil Corporations have right to set up additional retail outlets. But, such proposals should promote public interest and should be based on proper market study and not for whimsical or ulterior purpose. No feasibility study appears to have been conducted for 5125 numbers of newly proposed petroleum retail outlets.

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- (iv) The Oil Corporations have not disclosed the reasons for taking such an unusual decision in doubling the number of petroleum retail outlets.
- (v) The petitioners being public spirited citizens have the right to seek judicial review of such a decision involving huge expenditure of public funds.
- (vi) The petitioners are not challenging the policy of the respondents to increase the number of petroleum retail outlets. But, the challenge is only against the implementation of the said policy and the decision taken in violation of Article 14 of the Constitution of India due to arbitrariness, unreasonableness and adhocism apparent on the face of the proposed expansion scheme.
- (vii) The decisions, which were referred to by the respondents, have been distinguished.
- (viii) The State Government cannot wriggle out of its responsibility to ensure compliance of IRC Norms, 2009 as IRC is the Apex National Body of Experts drawn from Road Transport Sector across the country.

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- (ix) It is true that various High Courts have taken different views regarding the statutory force of IRC Circular No. 12-2009. However, the issue is no more *res integra* in respect of Tamil Nadu in the light of the order passed by this Court in W.P.No.691 of 2017, dated 18.01.2019 and the decision of the Honourable Supreme Court in ***Indian Oil Corporation Limited and others vs. Arti Devi Dangi and another, reported in (2016) 15 SCC 480.***
- (x) The observations of the Honourable Supreme Court in the case of ***Arti Devi Dangi*** (supra) shall confer the binding force on the IRC Circular No.12-2009, within the State of Tamil Nadu, more so, when the State Government has admitted in the form of affidavit before the Division Bench in W.P.No.691 of 2017, which was a public interest litigation.
- (xi) In the counter affidavit filed by the Principal Secretary / Chairman, Tamil Nadu Pollution Control Board, it has been admitted that the operation of

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petroleum retail outlets would cause environmental issues. The National Green Tribunal and the Central Pollution Control Board has issued several directions / guidelines for compliance, while granting permission to the new petroleum retail outlets and the Tamil Nadu Pollution Control Board (TNPCB) needs to ensure prompt compliance of the same in the State of Tamil Nadu.

- (xii) The respondents have failed to evolve any proper mechanism and transparent procedure to ascertain and assess the various factors relevant for determining the suitability of proposed sites for setting up petroleum retail outlets.
- (xiii) It is seen from the tender notifications that 2410 numbers of proposed locations, which is about 50%, out of the total 5125 numbers of notified locations do not conform to the IRC Norms as regards the minimum plot sizes alone.
- (xiv) The averment of the respondents that only 20% to 25% of the locations advertised for new petroleum retail

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outlets would ultimately materialize is absurd and ridiculous argument.

- (xv) In view of the absence of any uniform policy / guidelines for adherence to IRC Norms, 2009 and proper assessment of the factors listed under the proforma for No Objection Certificate under Rule 144 of Petroleum Rules, 2002, the respondents need to formulate necessary procedures to be followed by the District Authorities and issue appropriate instructions, guidelines or circulars to ensure that prescribed and transparent procedures are followed in an uniform manner while issuing No Objection Certificates for setting up petroleum retail outlets across the country.

10. The learned counsel for the petitioners has referred to the documents annexed in the typed set of papers to substantiate his case that the prayer sought for by the petitioners is fully justified and the writ petitions are in public interest and the Court should interfere with the impugned notifications and allow the writ petitions as prayed for.

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11. Mr.V.B.R.Menon, learned counsel for the petitioners, has placed reliance upon the decision in the case of **Arti Devi Dangi** (*supra*), in support of his contention that IRC Guidelines are mandatory as it promotes public safety and binds the respondents.

12. Relying on the decision of the Honourable Supreme Court in the case of **Director of Settlements, A.P. and others vs. M.R.Apparao and another**, reported in **(2002) 4 SCC 638**, it is submitted that all observations of the Honourable Supreme Court in the judgments shall be law declared under Article 141 of the Constitution of India and therefore, binding on the respondents.

13. Referring to the decision of the High Court of Manipur at Imphal, in PIL No.19 of 2017, dated 18.01.2018, it is submitted that the State Government therein was directed to frame necessary rules for safety of public from the operation of the petroleum retail outlets in the State of Manipur.

14. Referring to the decision of the National Green Tribunal in O.A.No.31 of 2019, dated 22.07.2019, it is submitted that directions have

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been issued for installation of Vapour Recovery Systems and the respondents have not complied with the same.

15. Mr.T.S.Mohamed Mohideen, learned counsel appearing for the petitioner in W.P.(MD) No.705 of 2019, submitted that the respondents have failed to follow the Women (Reservation in Services) Act, 2016, which they are bound to follow, because the Oil Corporations are Public Sector Undertakings and they fall within the definition of Section 2(b) of the Women (Reservation in Services) Act, 2016 and the services rendered by them come under the purview of Section 2(c) of the said Act. Therefore, the respondents Oil Corporations are bound to reserve 33% of outlets for women. However, the brochure is silent in respect of reservation of outlets for women and no woman can apply for dealership under permanent reservation category.

16. It is further submitted that the impugned notifications are against Clause 2.1.2 of the Office Memorandum, dated 09.10.2000, issued by the Ministry of Petroleum and Natural Gas and against Clauses 3.1.2 and 3.2.1 of the said Office Memorandum, which pertain to the notice period and application fee respectively. On these grounds, the learned counsel for the petitioner seeks for setting aside the impugned notifications.

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17. Ms.S.Mahalakshmi, learned counsel appearing for the petitioner in W.P.(MD) No.2661 of 2019, has filed written submission stating that the procedure for establishment of retail outlets reveals that the same will have an adverse impact on the environment in terms of degradation of air, noise and water pollution. The figures, which are mentioned in the website, have been misinterpreted. There has been no proper assessment nor any study before issuing the impugned notifications. Further, it is submitted that the impugned notifications appear to have been issued solely as a strategy in favour of conducting elections and to please the public at large, without taking the adverse impact, which would cause. Reliance was placed on the decision in **Arti Devi Dangi** (supra) to state that IRC Guidelines are mandatory. It is further stated that the interest of the existing operators were not considered, no opportunity was provided to the existing operators. On these grounds, the learned counsel seeks for setting aside the impugned notifications.

18. Mr.S.Parthasarathy, learned Senior Counsel, assisted by Mr.K.Muralidharan, Mr.S.Natesh Raja and Mr.M.Sridharan, learned counsel appearing for the Oil Corporations, submitted that the respondents have filed counter affidavits in all the writ petitions clearly setting out as to the manner in which the impugned advertisement has been issued and the steps taken

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prior to issuance of the said advertisements and there is absolutely no illegality in the decision or decision making process.

19. It is further submitted that insofar as the installation of Vapour Recovery Systems is concerned, the respondent Oil Corporations will comply with the said condition. But, however, time is yet to come for doing so as the impugned notifications have been issued and applications have been called for and in the process of being filed and therefore, as and when the situation arises, necessary directions will be issued.

20. It may not be necessary for us to refer to all the counter affidavits, but, having noted the facts in W.P.(MD) No.19218 of 2019, we refer to the counter affidavit filed by the Indian Oil Corporation / eighth respondent in the said writ petition.

21. It has been stated that the present public interest litigations are gross misuse of the jurisdiction of this Court and it is an abuse of process of this Court for the sake of benefit of one individual. There is no genuine public interest exhibited and it is merely an adventure of knight errant borne out of wishful thinking.

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22. So far as the application given by the petitioner Mr.Durairaj Venkatachalam, a writ appeal has been filed against the order in the writ petition, which is pending in the SR stage and therefore, the respondents desire to keep the petitioner along with other applicants in the reckoning. Further, the said order in the writ petition pertains to a National Highway locations and there are small fractions in number and hence, the order passed in W.P.(MD) No.2687 of 2019 is not applicable to the impugned notifications.

23. It is submitted that the Circulars issued by the Indian Roads Congress are only guidelines and the respondent Oil Corporations will have the same as a yardstick and it is not mandatory. The respondent Oil Corporations decide the minimum measurements, after taking note of all the feasibilities and the norms of the National Highway. It is denied that 50% of plot dimensions of the retail outlets advertised are less than the minimum requirement. It is stated that the Indian Oil Corporation advertised for 2615 locations, out of which 470 are on the National Highways and therefore, the allegations made by the petitioner are bereft of facts.

24. It is further submitted that the respondent Oil Corporations will carry out necessary land evaluation and ensure that the land offered by

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the selected applicant meets with various parameters for establishment of retail outlets and thereafter only, further process will be carried out. It is further submitted that the petitioner cannot challenge the advertisements on the basis of violation of circular as it does not have statutory force. The procedure, which has been laid down in the guidelines for selection of suitable applicants, has been explained in the counter affidavit. It is submitted that all details pertaining to the advertisements, selection criteria, land evaluation, security deposits, licensing fee and all necessary norms have been clearly mentioned in the brochure and it clearly mentions applicability of the norms of NHAI. It is submitted that the land evaluation stage comes after selection and the criteria have been spelt out by the petitioner himself, which clearly signifies no concealment / non-disclosure.

25. It is submitted that Vapour Recovery Systems (VRS) are installed by the Public Sector Undertaking Oil Marketing Companies at their own cost and there is no need for the applicant to be directed to install the same. Therefore, the allegations of the petitioner are without any basis and totally on surmise and the allegations are both legally and factually unsustainable.

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26. It is submitted that the impugned advertisements are whole hearted attempt by the Corporation to give a fair and equitable chance to the interested candidates as entrepreneurs and at the same time, generating employment for scores of unemployed labour class category. The retail outlets have been proposed to cater to the increasing demand and to make it convenient for the customers as well as transporters and there is a pressing need to expand the network in an sizeable way through the impugned advertisements. The fact that the petitioner applied for dealership in response to the advertisement indicates that he has expressed his willingness to be part of retail network expansion programme initiated by the Public Sector Oil Companies.

27. It is further submitted that the network expansion is prerogative of Public Sector Undertaking Oil Marketing Companies and earlier the Oil Corporations issued a notification for 2829 locations in October 2014, out of which 15% has been materialized for formation of retail outlets and after a gap of four years, the impugned advertisements have been issued for 5125 locations.

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28. Further, it is submitted that from 2014, the growth in consumption of petrol and diesel in Tamil Nadu and Puducherry is about 8% and 3% per annum respectively and there is an expected growth in fuel consumption in the next ten years, which necessitates the network expansion by the Oil Corporations. The NHAI guidelines and PESO norms, which are statutory in nature, ensure more stringent terms with regard to the access and locations and layout of fuel stations.

29. It is further submitted that the decision of the High Court of Manipur directing that no future licenses be issued till rules are framed has been stayed by the Honourable Supreme Court vide order dated 27.07.2018 in SLP (C) No.20173 of 2018 filed by Bharat Petroleum Corporation Limited. It is further submitted that no objection certificates for setting up retail outlets are issued by the District Authorities by adhering to the rules framed by Petroleum & Explosives Safety Organization (PESO), Government of India and based on clearance from various Government agencies, such as, Fire Department, Police Department, Highways Department and Revenue Department. It is further submitted that respondent Oil Corporations are not parties to W.P.No.691 of 2017. It is further submitted that the power to grant

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no objection certificate for petroleum retail outlets is vested with the District Collector of the concerned District under the Petroleum Act and Rules framed thereunder and the IRC guidelines cannot override the same.

30. Further, it is submitted that the proposals of the respondent Oil Corporations for network expansion is based on the rate of return, financial viability and other parameters. It is further submitted that in a batch of writ petitions in W.P.Nos.19491 of 2014 etc., the challenge was to the notification issued in the year 2013 for appointment of dealers for retail outlets and distributors for LPG and the writ petitions were dismissed by the Division Bench and in the special leave petition filed before the Honourable Supreme Court, there was an order of *status quo*, which was subsequently vacated and the Oil Corporations were permitted to proceed with the selection. Further, it is submitted that similar writ petitions challenging 2018 notifications were filed in various States and they were dismissed.

31. Identical stand has been taken by Bharat Petroleum Corporation Limited, which is ninth respondent in the writ petition.

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32. The learned Senior Counsel appearing for the respondent Oil Corporations referred to the order passed by the High Court of Uttarkhand in PIL No.402 of 2019, dated 26.04.2019; order passed by the High Court of Madhya Pradesh, Indore Bench, in W.P.No.1294 of 2019, dated 19.02.2019; Order passed by the High Court of Madhya Pradesh in W.P.Nos.2001 – 2009, dated 11.02.2019; Order passed by the High Court of Kerala at Ernakulam, in W.A.No.1630 of 2019, dated 19.09.2019; Order passed by the High Court of Allahabad, in Writ (C) Nos.3267 of 2019 etc. batch, dated 13.09.2019 and the order passed by the High Court of Judicature at Allahabad in W.C.No.5432 of 2019, dated 15.02.2019, which was affirmed by the Honourable Supreme Court in SLP(C) No.16760 of 2019, dated 26.07.2019.

33. The petitioner has filed a common rejoinder affidavit to the counter affidavits filed by the respondents and the averments set out therein have been noted by us as the learned counsel for the petitioner has placed the same for our consideration in the common written arguments.

34. There are four petitioners before us. All of whom claim that they are public interest litigants and all of them have a common grievance i.e.,

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they seek to quash the notifications issued by the respondent Oil Corporations inviting applications for establishment of new petroleum retail outlets in Tamil Nadu. The petitioner Mr.Durairaj Venkatachalam was an applicant for a new dealership by responding to an advertisement dated 25.11.2018, issued by the respondent Oil Corporation, at Perambalur. The notification has been set aside in a writ petition filed before this Court in W.P.(MD) No.2687 of 2019 by order dated 12.02.2019 and the petitioner would state that the application fee of Rs.10,000/- paid by him is yet to be returned by the respondent Oil Corporation. Therefore, it is rather doubtful that the petitioner could be termed as a public interest litigant as he himself was an applicant for allotment of new petroleum retail outlets. But, his application could not be processed, because a third party one Mr.Kumaravel filed a writ petition stating that the site dimension does not meet the specifications and therefore, the notification dated 25.11.2018 was quashed. When such is the factual position, a doubt arises in our mind as to whether the petitioner Mr.Durairaj Venkatachalam can raise a plea that the respondent Oil Corporations have not adopted any scientific approach for proposing to open more than 5000 retail outlets in the State of Tamil Nadu and Puducherry. The respondent Oil Corporations have submitted that a writ appeal has been filed by the Corporation as against the said order and the same is pending.

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35. The petitioner Mr.V.Venkidusamy in W.P.(MD) No.3678 of 2019 states that he is an agricultural graduate engaged in organic farming and is a consultant to the farmers. Most of the contentions as raised by the other writ petitioner Mr.Durairaj Venkatachalam have been pleaded in the affidavit filed in support of the writ petition, but in a slightly different form.

36. It is pointed out by the learned counsel appearing for the private respondents in W.P.(MD) No.3678 of 2019, who have filed applications for being considered for grant of petroleum retail outlet dealership, that Mr.V.Venkidusamy is not a genuine public interest litigant and this is evident from Ground (ii) in Page No.7 of the writ affidavit, wherein the petitioner states that before launching of such a massive expansion drive of retail network, the opinion / grievances of the existing retail outlets have not been either sought or considered. This averment, according to the learned counsel, is a clear indicator that the petitioner Mr.V.Venkidusamy is not a genuine public interest litigant, but, in all probabilities set up by an existing petroleum retail outlet dealership. We shall consider this contention in the later part of our order. Equally, the petitioner in W.P.(MD) No.2661 of 2019 also seeks to support the existing dealers, none of whom are aggrieved by the impugned

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notifications. Thus, it is not clear as to whose case the petitioner is canvassing.

37. The sheet anchor of the arguments of Mr.V.B.R.Menon, learned counsel, is based upon the guidelines of the Indian Roads Congress. The learned counsel submitted that the guidelines have acquired statutory force. Therefore, the Oil Corporations are bound to comply with the same. Those guidelines are referred to for the purpose of administering that there are various parameters, which are to be taken note of by the various statutory authorities before they grant no objection certificate or approval or permission or sanction. It is stressed that plot dimension of the proposed site should conform to the guidelines of the Indian Roads Congress. It is submitted that if the guidelines have been taken note of by the Honourable Supreme Court in anyone of its decisions and certain observations or directions had been issued in such cases, those decisions have force of law and binds the respondents under Article 141 of the Constitution of India.

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.

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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

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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 he other District Roads, etc.

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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

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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.

42. No doubt, the Indian Roads Congress is a multi-member body with experts in the field. The introductory passage of the 2009 guidelines, namely, IRC:12-2009, states that the Ministry of Shipping, Road Transport and Highways revised substantially the norms for location, layout and access to fuel stations along the National Highways keeping in view the increased

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speed of vehicles and greater need for road safety due to development of National Highways network and the norms were circulated in October, 2003. Subsequently, the Transport Planning, Traffic Engineering and Road Safety Committee decided that the draft for the revised standard might be updated by incorporating the present guidelines and accordingly, the Council approved the 2009 guidelines in its meeting.

43. Paragraph No.10 of the guidelines deals with implementation procedure. It states that Ministry of Petroleum & Natural Gas / Oil Companies, while entertaining any application for the installation of Fuel Station, would supply a copy of these norms to the applicant so that he may assess his position to fulfill the requirements of these norms. Ministry of Petroleum & Natural Gas / Oil Companies would ensure that the plot identified by the applicant conforms to the requirement of these norms in terms of the locations, assess layout and signs and markings. It further states that the Highway Agency may prescribe for a license deed to be signed between the oil company who wants to set up a new fuel station and the highway agency and also a suitable amount as license fee in consideration of the agreement. Non-conformity or any default in respect of the norms would make the fuel station liable to be de-energized.

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44. The Indian Roads Congress, Multi-Member Body, consists of Experts, have framed these guidelines from time to time. Their recommendations have to fructify into statutory notifications or orders or by suitable amendment to the legislation. Until the recommendations fructify into anyone of these, they continue to remain as guidelines and are to be interpreted as recommendatory and not mandatory. The Experts have made a suggestion with laudable intentions and the ultimate reason for doing so is to ensure safe road traffic. Therefore, the respondents would not be justified in refusing to look into the guidelines.

45. On a reading of the counter affidavit of the respondent Oil Corporations, we find the respondents they do not take such a rigid stand, but, their stand appears to be that the guidelines of the Indian Roads Congress are the guidelines *per se* and they cannot be compelled to follow the same as there are more stringent norms under the National Highways Act and PESO. If such is the position, the question would be whether, we, exercising jurisdiction under Article 226 of the Constitution of India could issue a writ of mandamus to compel the respondent Oil Corporations to adopt the guidelines issued by the Indian Roads Congress in the year 2009. The scope of issuing

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directions by the Writ Courts is no longer *res integra*. There should be a statutory duty cast upon the respondents to do a particular act. Upon failure, the arms of this Court are long enough to command to do that duty. In the instant case, the petitioner seeks for a direction from us to compel a Statutory Authority, namely, the State or the Central Government Authority and the Oil Corporations to follow a procedure, which is in the nature of the guidelines framed by an Expert Body and published in the year 2009. Therefore, in the facts of the present case, no direction can be issued to compel the respondents to adopt the guidelines of the Indian Roads Congress in its entirety.

46. One more aspect, which we need to take note of is that these guidelines, which are recommendatory, were issued in the year 2009. Admittedly, several notifications have been issued by the respondents Oil Corporations post 2009 and there is nothing on record placed before us by the petitioner to show that there was a challenge to any of those notifications on the ground of non-adherence to the guidelines of the Indian Roads Congress. In fact, the petitioner Mr.Durairaj Venkatachalam cannot plead for issuing a writ of mandamus, especially when he was an applicant under the notification. Therefore, the guidelines being recommendatory, it is for the appropriate Authority to consider the effectiveness and efficacy or bring

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amendments in the statute so as to bind the statutory authorities, who are required to issue no objection certificates or clearances or approvals. Therefore, we cannot be called upon to issue a direction to implement the guidelines, thereby introducing a different procedure or norms than what have been prescribed under the Central enactment or the rules framed thereunder or any other statutory notification by the executive instructions issued by the Central or State Government.

47. It is no doubt true that sufficient thought process has gone into before framing 2009 guidelines. However, we are not experts to state that the guidelines are far superior than the statutory provisions or the statutory provisions are far superior than the guidelines. Admittedly, ten years have passed by, after the guidelines were published. There have been various developments in the country insofar as road infrastructure is concerned. Several methodologies have been adopted by the both State Highways and National Highways Authority of India. Therefore, we are of the clear view that no direction can be issued to the respondents by compelling them to follow the guidelines of the Indian Roads Congress published in the year 2009.

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48. In the case of **Arti Devi Dangi** (supra), the question was whether the insistence by the Indian Oil Corporation Limited on adherence to the Indian Roads Congress (IRC) Guidelines requiring maintenance of specific distance between the proposed retail outlet and the median of the road was correct in view of the fact that in the advertisement and the brochure there was no specific reference to the said guidelines and no specific mention was made that the same would have to be complied with by a tenderer. The Honourable Supreme Court noted that the IRC Guidelines have been adopted by the PWD, Madhya Pradesh and therefore, it was argued by the Indian Oil Corporation Limited that the respondents ought to have verified all such requirements that the rules and sub-rules of PWD stipulate including the requirements spelt out under the IRC Guidelines.

49. It was contended by the respondents therein that there was no specific reference to the guidelines in question and hence, the requirement of compliance of those guidelines was not an essential condition of the tender. It was held that if the clauses in the advertisement required a tenderer to fulfil all requirements under the rules and sub-rules of PWD and if what was suggested / recommended by IRC has been adopted by the State PWD and the said norms are in the interest of public safety and would facilitate smooth

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movement of traffic, it will be difficult to hold that the rules and sub-rules of PWD contemplated in the advertisement do not embrace the IRC Guidelines either because there was no specific mention thereof in the tender documents or the same do not have a statutory flavour. Therefore, it was held that the fulfilment of the requirements spelt out by the IRC Guidelines, relevant to the said case, to be a mandatory requirement of the tender conditions. Accordingly, it was held that the action of the Corporation was not arbitrary or unreasonable. Further, on perusal of the orders of the High Court, it was held that the only basis on which the decision of the Corporation had been faulted by the High Court was on the ground that the IRC Guidelines were not mandatory. It was pointed out that such a view cannot be sustained keeping in mind the provisions of the advertisement, the purport and object of the said norms, the uniform application of the same to all the tenderers by the Corporation and above all the requirements of public interest. In the light of the said conclusion, the Honourable Supreme Court has held that it is not necessary to consider the arguments advanced on the question of permissibility of deviations from the tender conditions on the touchstone of public interest or the issue of understanding the requirement of the IRC Guidelines as implied terms of the tender document.

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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

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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,

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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

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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.

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55. The petitioner had raised another contention with regard to the Vapour Recovery Systems (VRS). In the counter affidavit filed by the respondent Oil Corporations, it has been stated that Vapour Recovery Systems (VRS) are installed by the Oil Corporations at their own cost and therefore, there is no need to call upon the applicant or the dealer to install such a system. This submission of the Oil Corporations is an answer to the query raised by the petitioner and we place on record the submission of the Oil Corporations so that they are bound over by what they have committed in the counter affidavit. Therefore, on this ground, the impugned tender notification cannot be faulted.

56. Another contention was advanced stating that the decision to increase the number of retail outlets by doubling the figures has been made without any scientific criteria and transparent procedure. At this stage, we note that the petitioners have candidly stated that they have no objection for any expansion scheme of petroleum retail outlets. Having taken such a stand, the petitioners cannot get away by merely stating that no scientific process was adopted nor a transparent procedure was followed. Mere mentioning of words “Scientific Process” and “Transparency Procedure” would not suffice. The counter affidavit seeks to sustain the decision attributing to increase in

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the fuel consumption in the State of Tamil Nadu and Puducherry. The respondents would state that the previous mega notification was issued in the year 2014, wherein advertisement was released for 2829 locations, of which 15% were materialized. The next notification, which is impugned in the present writ petitions, has been issued after four years. The increase in consumption for petrol is at 8% and diesel at about 3% per annum. The vehicle population in the State of Tamil Nadu as on 31.03.2018 was 2.56 Crores. There has been a steady increase in the vehicle population at the rate of 8% per annum. We find absolutely no justification to hold that the averments set out by the Oil Corporations are either false or frivolous or can it be termed as absurd and ridiculous as mentioned by the petitioner. The petitioner has referred to the rating done by CRISIL and referring to the report, it is stated that it reveals hollowness of the proposed expansion scheme. After stating so, the petitioner would state that if large number of existing petroleum retail outlets are wound up due to the proposed mega expansion plan, the efficacy and reasonableness of the impugned tender needs to be reassessed before implementation.

57. Further, it is stated that it is unfortunate that the respondents Oil Corporations are attempting to throw the existing dealers out of their

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business by appointing new dealers in close proximity without disclosing the ground realities and prospects of the survival to either of them. This statement made by the petitioner, as mentioned in the written submissions in Paragraph No.66, may lead to a presumption that the writ petitioners are at the behest of existing dealers. We have noted the submission of the petitioners in both the writ affidavits and the written submissions that the petitioners have no objection to any expansion scheme of petroleum retail outlets in Tamil Nadu. Having stated so, if the petitioners are to be much concerned about the existing dealers, we would not be wrong in observing that there is an element of private interest in the writ petitions.

58. As pointed by us earlier, the petitioner Mr.Durairaj Venkatachalam was an applicant for grant of dealership. This is an admitted fact. His application was not rejected and the respondents state that his application is still kept alive along with the other applications, which would be processed, because a third party filed a writ petition stating that there is a mistake in the site dimension. This submission was accepted by the Writ Court and the writ petition was allowed. The Oil Corporation has filed a writ appeal, which according to the petitioner, has been done after a gap of 7 ½ months that too after filing W.P.(MD) No.19218 of 2019, in order to claim

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pendency of the writ appeal as an excuse, which indicates the mischievous conduct and character of Hindustan Petroleum Oil Corporation Limited in similar matters. The said writ appeal is not before us and we cannot comment upon the decision of the aggrieved to file an appeal after 7 ½ months. Whatever contentions, the third party has to take in the said appeal and it is for them to do so.

59. The argument of Mr.T.S.Mohamed Mohideen, learned counsel, was with regard to the reservation for women. The case of the petitioner rests on the provisions of the Women (Reservation in Services) Act, 2016. It is contended that in terms of the said Act, the respondent Oil Corporation has to compulsorily reserve 33% of the outlets to women.

60. At the very outset, we wish to point out that the interpretation given by the petitioner is wholly unacceptable as the provisions of the said Act cannot be made applicable to the grant of dealership. The said Act was to provide for reservation of posts and appointments for women in service under the Central Government and for matters connected therewith and incidental thereto. Section 2(c) of the said Act defines “services” to mean service in connection with the affairs of the Central Government and includes the service

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in any public sector undertaking or enterprise of any authority under the control of the Central Government. To fall within the definition of service under the said Act, it should be in connection with the affairs of the Central Government or in any public sector undertaking or enterprise of any authority under the control of the Central Government. The preamble of the Act makes it clear that as the Act was passed to provide for reservation of posts and appointments for women in services under the Central Government. Therefore, the provisions of the said Act can have no application to grant of dealership for retail sale of petroleum products, which essentially is a licence granted in favour of the eligible applicants subject to conditions stipulated therein.

61. Furthermore, the relationship between the Oil Corporation and the Dealer is that of a licensor and licensee. The terms and conditions are spelt out in the agreement between the parties and by no stretch of imagination, it can be stated to have been “appointed to the service” of a public sector undertaking by virtue of grant of dealership. Thus, the argument is thoroughly misconceived and hence, rejected.

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62. In the counter affidavit filed by the respondents, the policy decisions taken by Government from time to time with regard to the award of dealership have been spelt out. The policy framed during 1997 provides reservation of 25% for SC/ST category, 8% for Paramilitary / Police / Government Personnel, 8% for Defence Personnel, 5% for Physically handicapped Persons, 2% for Freedom Fighters, 2% for Outstanding Sportspersons and 50% for Open Category. It is further stated that while formulating the revised guidelines, 27% reservation has been given OBC category and reservation for SC/ST category was limited to 22.5% and balance 50.5% was earmarked for open market category. The above main categories of reservation have also been provided to sub-categories such as Paramilitary / Police / Government Personnel, Defence Personnel, Physically Handicapped Persons, Freedom Fighters, Outstanding Sportspersons etc. With a view to ensure financial and social status of women, incase of individual applicants applying as sole proprietor, his spouse will be made a partner with share of 50%, unless the spouse is already gainfully employed and does not wish to be made a partner. Therefore, women candidates are entitled to apply against all categories, provided they are eligible to apply under the said category. Thus, it is the submission of the respondents that by the policy, which is in vogue as

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on date, at 99% of the locations, women can become dealers instead of being just applicants.

63. Further, it is stated that 4,04,392 applications have been received accompanied with application fee by all the three Oil Corporations against 78,493 locations advertised on all India basis, of which, 93,888 applications have been received from women applicants i.e., more than 30% response from women applicants. Thus, we are fully satisfied that the present policy adopted by the respondent Oil Corporation with regard to the reservation cannot be faulted on the grounds raised by the petitioner as the said enactment, namely, Women (Reservation in Services) Act, 2016 can have no application to the facts of the present case.

64. In the affidavit filed in support of the writ petition, the writ petitioner Mr.V.Venkidusamy states that before launching of a massive expansion drive of retail network, the opinion / grievances of the existing retail outlets have not been either sought or considered.

65. The grounds raised by the petitioner in W.P.(MD) No.2661 of 2019 are more or less identical to the grounds raised in two other writ

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petitions. The respondents would state that the writ petition in W.P.(MD) No. 2661 of 2019 is not a genuine public interest litigation, but for personal gain as the petitioner seeks to protect the interest of the existing dealers and therefore, it is not a *bona fide* public interest litigation. To substantiate their stand in the other writ petitions as well as that though large number of locations are advertised, the ultimate turnout is far less, in paragraph No.23 of the counter affidavit, a data has been given in a tabulated format, with regard to the previous notification issued in October, 2014. Out of the total 2829 locations, which were advertised, the number of outlets commissioned since 2015 till date is 426, which about 15%. Therefore, the stand taken by the respondents that the ultimate number of outlets, which could be commissioned would be far less than the number of outlets for which advertisements are issued is a reality and the same cannot be stated to be either false or fanciful claim.

66. In the affidavit filed in support of the writ petition, the petitioner Mr.V.Venkidasamy states that before launching of a massive expansion drive of retail network, the opinion / grievances of the existing retail outlets have not been either sought or considered. In fact, this is a second ground raised in the writ petition. This is a clear indication that the petitioner

W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

is patronising the cause of the existing retail outlets. If that is so, it goes without saying that the writ petition is aimed at setting aside the impugned notifications and if the petitioner is successful in the said attempt, the ultimate beneficiary is the existing dealers. Therefore, we hold that the writ petition filed by Mr.V.Venkidasamy is not a genuine public interest litigation, but largely to support the existing retail outlets.

67. For all the above reasons, we hold that the petitioners have not made out any case for setting aside the impugned notifications issued by the respondent Oil Corporations.

68. Accordingly, all the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते [T.S.S.,J.] [R.T.,J.]
17.10.2019

Index : Yes / No

Internet : Yes / No

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W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

To:

- 1.The Additional Chief Secretary,
Revenue and Disaster Management Department,
Fort. St.George, Secretariat,
Chennai-600 009.
- 2.The Principal Secretary,
Highways and Minor Ports Department,
Fort. St.George, Secretariat,
Chennai-600 009.
- 3.The Director General of Police,
No.1, Dr.Radhakrishnan Salai,
Near Light House, Mylapore,
Chennai-600 004.
- 4.The Secretary,
Union of India,
Ministry of Road Transport and Highways,
Transport Bhawan-1,
Parliament Street,
New Delhi - 110 001.
- 5.The Secretary,
Ministry of Petroleum and Natural Gas,
A-Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi-110 001.
- 6.The Secretary
The Petroleum and Natural Gas Regulatory Board
1st Floor, World Trade Center
Babar Road, New Delhi-110 001
- 7.The Secretary,
Union of India,
Ministry of Forest and Environment,
New Delhi.

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W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

- 8.The Secretary,
Government of Tamil Nadu,
Department of Revenue,
Secretariat,
Chennai.
- 9.The Secretary,
Revenue and Disaster Management Department,
Fort.St.George, Secretariat,
Chennai-600 009.
- 10.The Under Secretary,
Government of India,
Ministry of Petroleum & Natural Gas,
Shashtri Bhawan,
New Delhi-110 001.
- 11.The Under Secretary,
Government of India,
Ministry of Woman and Child Development,
New Delhi-110 001.

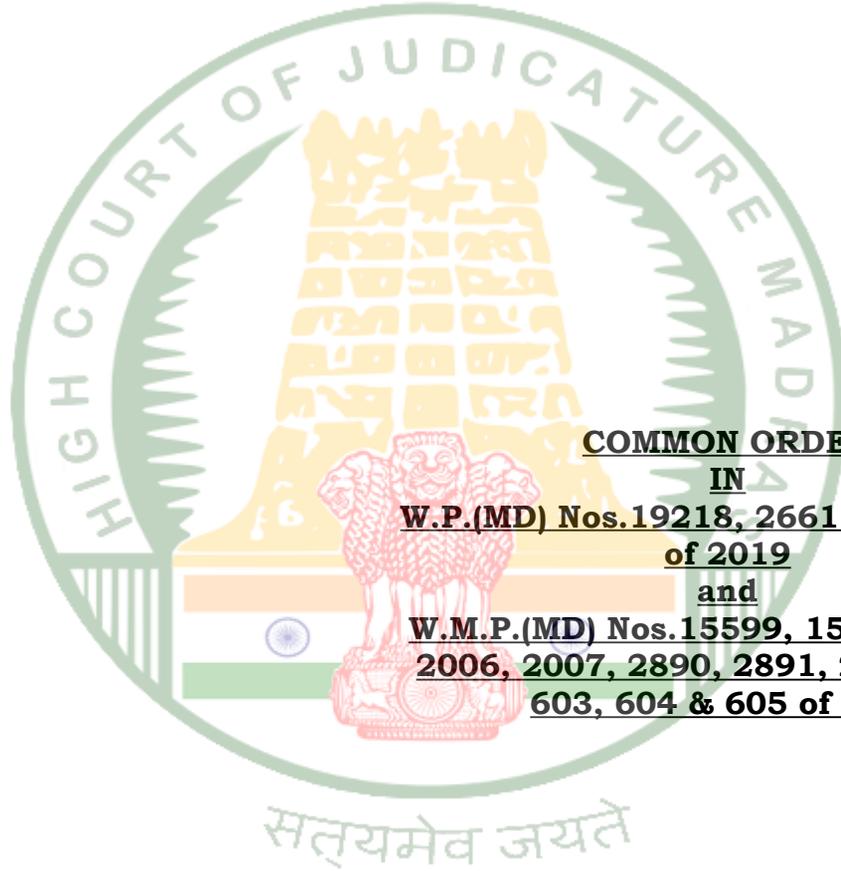


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W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019

T.S.SIVAGNANAM, J.
and
R.THARANI, J.

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COMMON ORDER
IN
W.P.(MD) Nos.19218, 2661, 3678 & 705
of 2019
and
W.M.P.(MD) Nos.15599, 15601, 15866,
2006, 2007, 2890, 2891, 2892, 3678,
603, 604 & 605 of 2019

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17.10.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.18753 of 2019

and

W.M.P.No.18101 of 2019

N.Krishnakumar,
S/o.C.Narayanasamy,
No.2, Periyar Nagar,
Ranganathapuram,
Perianaicken Palayam,
Coimbatore 641 020.

... Petitioner

Vs

1.The District Collector,
Coimbatore District,
Collectorate Building,
State Bank Road, Gopalapuram,
Coimbatore 641 018.

2.The District Revenue Officer,
Coimbatore District, Collectorate Building,
State Bank Road, Gopalapuram,
Coimbatore 641 018.

3.The Joint Chief Controller of Explosives,
A and D Wing, Block 1 – 8,
Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai 600 006.

4.The Divisional Engineer,
(Construction and Maintenance)
Highways Department,

ATT Colony, VOC Park Road,
Gopalapuram, Coimbatore 641 018.

5.The Deputy Director of Health Services,
No.219-A, Race Course Scheme Road,
Coimbatore - 641 018.

6.The District Fire Officer,
Coimbatore Division,
No.50, State Bank Road, Gopalapuram,
Coimbatore 641 018.

7.M/s.Nayara Energy Limited,
Sheerosh Madhav Building,
2nd Floor, New No.58/2, Old No.73/2
New Avadi Road, Kilpauk,
Chennai 600 010.

8.K.Chinnasamy,
S/o.Karuppannan
Door No.229, Gandhi Nagar,
No.2, Gudalur, Coimbatore 641 020
(R8 impleaded as per order dated 12.12.2019 passed
in WMP.No.32002 of 2019 in WP.No.18753 of 2019)

9.The Secretary,
Highways Department,
Fort St. George, Chennai. सत्यमेव जयते
(R9 impleaded as per order dated 12.12.2019
passed in WP.No.18753 of 2019)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus to permanently forbear the respondents from issuing No Objection Certificate (NOC), Explosive Licence and other necessary approvals/permissions/consents to the 7th

respondent to open and operate a New Road-side Petroleum Retail Outlet at SF No.337/1, Agrahara Samakulam Village, Annur Taluk, Coimbatore North, Coimbatore 641 110.

For Petitioner :Mr.V.B.R.Menon

For Respondents :Mr.K.Makesh (for R1, R2, R4 to R6 & R9)
Special Government Pleader

Mr.G.Karthikeyan (for R3)

Mr.Abdul Saleem (for R7)

ORDER

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

This petition has been filed to issue direction forbearing the respondents from issuing No Objection Certificate to the 7th respondent to open and operate a New Road-side Petroleum Retail Outlet at SF No.337/1, Agrahara Samakulam Village, Annur Taluk, Coimbatore North, Coimbatore 641 110.

2.When the matter is called today, Mr.K.Makesh learned Government Pleader has produced a letter dated 19.08.2019 written by the 4th respondent to the 2nd respondent, rejecting the request of the 7th respondent. Therefore, the prayer sought for by the petitioner has been complied with and no further order is necessary.

3.Hence, the Writ Petition is closed. No costs.

Consequently, connected Miscellaneous Petition is also closed.

(NKKJ) (PVJ)
10.02.2020

sai

To

1.The District Collector,
Coimbatore District,
Collectorate Building,
State Bank Road, Gopalapuram,
Coimbatore 641 018.

2.The District Revenue Officer,
Coimbatore District, Collectorate Building,
State Bank Road, Gopalapuram,
Coimbatore 641 018.

3.The Joint Chief Controller of Explosives,
A and D Wing, Block 1 - 8,
Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai 600 006.

4.The Divisional Engineer,
(Construction and Maintenance)
Highways Department,
ATT Colony, VOC Park Road,
Gopalapuram, Coimbatore 641 018.

5.The Deputy Director of Health Services,
No.219-A, Race Course Scheme Road,
Coimbatore - 641 018.



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6.The District Fire Officer,
Coimbatore Division,
No.50, State Bank Road, Gopalapuram,
Coimbatore 641 018.

7.The Secretary,
Highways Department,
Fort St. George, Chennai.

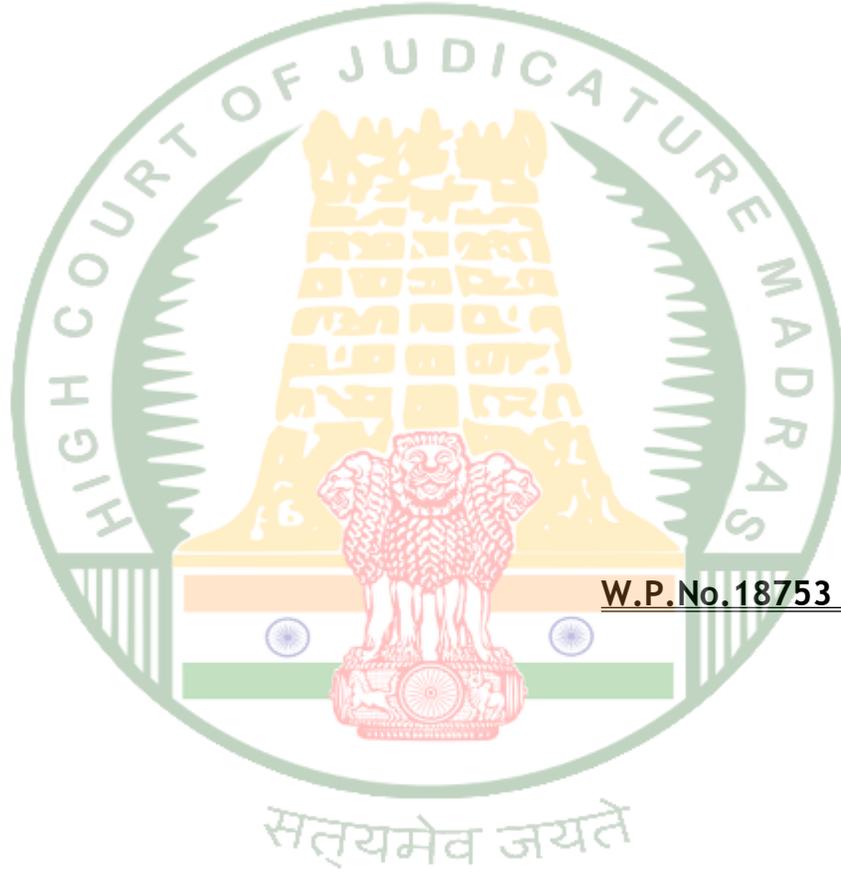


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W.P.No.18753 of 2019

N.KIRUBAKARAN, J.
and
P.VELMURUGAN, J.

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W.P.No.18753 of 2019

WEB COPY

Dated : 10.02.2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2021

DELIVERED ON : 11.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.35885 of 2019
and WMP.Nos.36795 & 36797 of 2019

P.G.M.Petrol Bunk,
 Dealer of Indian Oil Corporation,
 Rep. by its Proprietor, P.Goush Basha,
 Dasagonipalli, Veppanapalli village & post,
 Krishnagiri Taluk & District. ... Petitioner

VS.

- 1.The Joint Chief Controller of Explosives,
 A and D Wing, Block 1 to 8, 2nd floor,
 Shastri Bhavan, 26, Haddows Road,
 Nungambakkam, Chennai.
- 2.The District Revenue Officer,
 Krishnagiri, Krishnagiri District.
- 3.The Divisional Engineer, सत्यमेव जयते
 Tamilnadu Highways Department,
 Krishnagiri.
- 4.The State Head,
 Essar Oil Ltd., Essar House,
 5th floor, No.7, Esplanade, Chennai – 600 108.
- 5.Tamilselvi ... Respondents

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Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari to call for the records relating to the impugned order of the 2nd respondent in Ref.No.Mu.Mu.No.25271/2019/C2 dated 20.12.2019 and quash the same as the same is arbitrary, illegal and non-est in the eyes of law.

For Petitioner : Mr.V.Prakash, Senior Counsel
for Mr.T.Arockia Dass
for M/s.Dass and Viswa Associates

For Respondents : Mr.V.Ashok Kumar, CGSC for R1
Mr.V.Shanmuga Sundar for R2
Special Government Pleader
Mr.Arul Dass for R3
Government Pleader
Mr.AR.L.Sundaresan, Senior Counsel
for Mr.V.Nicholas for R5

ORDER

The points for consideration in this writ petition are whether

(a) The Indian Road Congress Guidelines, 2009 stipulating a minimum distance of 300 meters between two petrol bunks in a non-urban rural area is mandatory.

(b) Whether a rival competitor has locus standi to challenge the No Objection Certificate issued to another competitor for setting up a petrol bunk.

2.The case of the petitioner is that the impugned order passed by the second respondent granting No Objection Certificate to the fifth respondent to set up a petrol bunk suffers from material irregularities and violates the norms and Guidelines issued by the Union Ministry of Road Transport and Highways dated 25.09.2003 as well as the Indian Road Congress Guidelines, 2009.

3.It is also the case of the petitioner that the second respondent has placed wrong reliance on the orders passed in the batch of writ petitions by the Madurai Bench of Madras High Court.

4.According to the petitioner, the petrol bunk proposed to be set up by the fifth respondent is within a distance of 170 meters from the petitioner's petrol bunk and hence the minimum distance criteria fixed under the Indian Road Congress Guidelines at 300 meters has been violated. According to

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the petitioner, this would endanger the lives of the people in and around that area as the object of those Guidelines are to ensure safe distance between the two retail outlets in order to avoid devastating effects in case of fire accidents.

5.It is the case of the petitioner that the second respondent without having regard to the safety aspect and prescribed Guidelines and order of the Division Bench of this Court has granted No Objection Certificate to the fifth respondent under the impugned order on flimsy grounds which is arbitrary and illegal.

6.It is the case of the official respondents as seen from the counter affidavit filed by the second respondent is that the

(a) Impugned order is legally correct and not arbitrary.

(b) The impugned order does not suffer from any material irregularity and does not violate the norms and Guidelines framed by the Ministry of Road Transport and Highways.

(c) The impugned order has been passed based on the judgment rendered in a batch of writ petitions before the Madurai Bench of Madras High Court.

(d) There is no partiality in favour of any person and the second respondent has acted as per law and as per the rules laid in the Petroleum Act and Rules.

(e) The petitioner is dragging the issue for his business rivalry.

(f) The petitioner ought to have filed Statutory Appeal before the Statutory Appellate Authority but instead has filed this writ petition which is not maintainable.

(g) The third respondent is not the Authority in the matter and the remarks of the third respondent was overruled by the second respondent under the impugned order.

(h) The fourth respondent has obtained all the requisite permission to establish the subject petrol bunk in the subject land.

7.The fifth respondent which has been allotted subject petrol bunk by the fourth respondent would submit that

(a) Indian Road Congress Guidelines are not mandatory and would submit that the impugned order has been passed granting No Objection Certificate correctly by applying the decision of the Division Bench of the Madurai Bench of Madras High Court in W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019 dated 17.10.2019 wherein it has been held that the Indian Road Congress Guidelines are not mandatory as it will get statutory force only when appropriate rules are framed by the State Government.

8.It is also their case that Circulars and Letters are just communications between officials and can never take the place of Rules having statutory force.

9.Heard Mr.V.Prakash learned Senior Counsel assisted by Mr.Arockia Dass, learned counsel for the petitioner, Mr.V.Shanmuga Sundar, learned Special Government Pleader for the second respondent, Mr.Arul Dass, learned Government Pleader for the third respondent and

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Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Mr.V.Nicholas, learned counsel for the fifth respondent.

10.The learned Senior Counsel for the petitioner drew the attention of this Court to the Union Ministry of Road Transport and Highways and Indian Road Congress Guidelines-2009 and would submit that the subject petrol bunk is situated within a distance of 170 meters from the petitioner's petrol bunk and hence it is in violation of Guidelines 6.2.1 which stipulates that the minimum distance between two outlets in the rural areas should not be less than 300 meters.

11.The learned Senior Counsel for the petitioner drew the attention of this Court to a judgment of the Hon'ble Supreme Court in the case of *Indian Oil Corporation Limited and Others vs Arti Devi Dangi and Another* reported in *(2016) 15 SCC 480* and would submit that Indian Road Congress Guidelines are mandatory in nature and have to be necessarily adhered to.

12.He also drew the attention of this Court to a Division Bench order of the Madras High Court dated 12.12.2019 in W.P.No.18753 of 2019 and would submit that in the said order, the Division Bench has categorically held that the Indian Road Congress Guidelines are mandatory and therefore, while issuing No Objection Certificate for setting up a petrol /diesel outlet, the Indian Road Congress Guidelines will have to be adhered to.

13.The learned Senior Counsel for the petitioner then drew the attention of this Court to a letter dated 08.02.2020 sent by the Principal Secretary to Government of Tamil Nadu to all the District Collectors/ Commissioner of Police instructing them to follow the Indian Road Congress Guidelines for issuance of No Objection Certificate for new petroleum retail outlets along the road side and would therefore submit that the Indian Road Congress Guidelines are mandatory in nature.

14.The learned Senior Counsel for the petitioner also drew the attention of this Court to a letter dated 08.11.2019 sent by the Assistant Divisional Engineer, Highways, Krishnagiri to the Divisional Engineer, Highways and would submit that as per the said letter, it is clear that the

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subject petrol bunk to be set up by the fifth respondent is situated at 198.50 meters from the petitioner's petrol bunk in violation of the Indian Road Congress Guidelines which stipulates that the minimum distance between two petrol bunks should not be less than 300 meters.

15. According to the learned Senior Counsel, despite instructions given by the Assistant Divisional Engineer, Highways that the proposed retail outlet to be set up by the fifth respondent violates the Indian Road Congress Guidelines, the impugned order has been passed issuing No Objection Certificate to the fifth respondent for setting up the retail petroleum outlet.

16. Per contra, Mr. A.R.L. Sundaresan, learned Senior Counsel for the fifth respondent would submit that the Indian Road Congress Guidelines are not mandatory in nature. According to him, the Hon'ble Supreme Court in *Arti Devi Dangi's* referred to supra by the learned Senior Counsel for the petitioner has clearly stated that the Indian Road Congress – 2009 recommendations cannot take statutory force until the respective State Government has adopted them and framed Rules incorporating the same.

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17.He drew the attention of this Court to a Division Bench judgment of the Madurai Bench of Madras High Court dated 17.10.2019 in W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019 and would submit that the Division Bench in the said judgment has considered the decision of the Hon'ble Supreme Court in *Arti Devi Dangi's* case and only thereafter has come to the conclusion that Indian Road Congress-2009 recommendations can never be made mandatory in the State of Tamil Nadu as the Government of Tamil Nadu has not adopted them by framing Statutory Rules.

18.The learned Senior Counsel for the fifth respondent would also submit that the order dated 12.12.2019 passed by another Division Bench of this Court in W.P.No.18753 of 2019 is only an interim order, whereas the judgment dated 17.10.2019 passed by the Division Bench of the Madurai Bench of Madras High Court in W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019 is a final judgment which has given due consideration to the decision of the Hon'ble Supreme Court in *Arti Devi Dangi's* case and only thereafter came to the conclusion that Indian Road Congress Guidelines are not mandatory. He would further submit that the connected writ petitions

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which has been referred to in the order dated 12.12.2019 passed by another Division Bench of this Court in W.P.No.18753 of 2019 are all Public Interest Litigations in which the fifth respondent is not a party and therefore has no bearing for the facts of the instant case.

19.The learned Senior Counsel for the fifth respondent would further submit that the petitioner is a business rival of the fifth respondent. According to him, the writ petition has been filed purely out of business motive and therefore not maintainable. In support of his submissions, he relied upon the following decisions of the Madras High Court:

(a) Division Bench judgment in the case of *Nataraja Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India, New Delhi and others* reported in 2005 (1) CTC 394.

(b) Single Bench decision in the case of *Kanyakumari District Petroleum Dealers Association vs. District Revenue Officer and Additional District Magistrate, Nagercoil and Others* reported in 2006 WLR 917

(c) Single Bench decision dated 04.09.2017 passed in W.P.No.41827

of 2016 batch in the case of *S.Shanmugharaja vs. District Collector and other.*

20.Mr.V.Shanmuga Sundar, learned Special Government Pleader for the official respondent would agree with the submissions made by the learned Senior Counsel for the fifth respondent. He would further reiterate that the second respondent has not shown partiality to any one and the impugned order has been passed only in accordance with law. He would further submit that there is an alternate Appellate efficacious statutory remedy available to the petitioner as against the impugned order. According to him, without exercising the same, the petitioner has approached this Court under Article 226 of the Constitution of India and hence the writ petition is not maintainable.

Discussion:

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

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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

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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

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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.

24. The petitioner is admittedly having a petrol bunk in the same area where the fifth respondent is proposing to set up the petroleum retail outlet. Admittedly, the petitioner is a competitor for the fifth respondent. The decisions relied upon by the learned Senior Counsel for the fifth respondent in the case of

(a) ***Nataraja Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India, New Delhi and others*** reported in ***2005 (1) CTC 394***

(b) ***Kanyakumari District Petroleum Dealers Association vs. District Revenue Officer and Additional District Magistrate, Nagercoil and Others*** reported in ***2006 WLR 917***

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(c) *S.Shanmugharaja vs. District Collector and other* dated 04.09.2017 passed in W.P.Nos.41827 of 2016 batch squarely supports the case of the fifth respondent who has contended that a business rival cannot file a writ petition against his competitor. The Division Bench of this Court in *Nataraja Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India, New Delhi and others* case referred to supra has held as follows:

3. The Supreme Court in *Mithilesh Garg v. Union of India*, AIR 1992 SC 443, held that a rival businessman cannot file a writ petition, challenging the setting-up of a similar unit by another businessman, on the ground that establishing a rival business close to his business-place would adversely affect his business interest, even if the setting-up of the new unit is in violation of law. In *Mithilesh* case, cited supra, the Supreme Court followed its own decision in *Rice and Flour Mills v. N.T.Gowda*, AIR 1971 SC 246, wherein it was held that a rice mill-owner has no locus standi to challenge under Article 226, the setting up of a new rice-mill by another even if such setting up be in contravention of S.8(3)(c) of the Rice

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Milling Industry (Regulation) Act, 1958 because no right vested in such an applicant is infringed.

*4. In the present case, the only grievance of the appellant is that if the fourth respondent is permitted to set up her retail outlet within one kilometer radius of the appellant's outlet, his business interest would be adversely affected. In our opinion, the appellant has no locus standi at all to complain against the setting up of a rival retail outlet by the fourth respondent, near his place of business, on the ground that would affect his business interest, inasmuch as the damage, if any, suffered thereby was **damnum** since **injuria-damage** without infringement of legal right. In our opinion, this will only result in promoting competition among the traders, which is good for the consumers. Merely because some of the customers may switch over to the rival retail outlet does not mean that public interest will suffer rather, in our opinion, it will benefit the consumers because, when there is competition, the businessman*

are compelled to provide better quality products at reasonable rates.

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.

26. For the foregoing reasons, there is no merit in this writ petition and accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

11.03.2021

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pam

Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order

Note: Issue order copy on 12.03.2021

To

1. The Joint Chief Controller of Explosives,
A and D Wing, Block 1 to 8, 2nd floor,
Shastri Bhavan, 26, Haddows Road,
Nungambakkam, Chennai.
2. The District Revenue Officer,
Krishnagiri, Krishnagiri District.
3. The Divisional Engineer,
Tamilnadu Highways Department,
Krishnagiri.



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ABDUL QUDDHOSE, J.
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**A pre-delivery order in
W.P.No.35885 of 2019**

11.03.2021

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W.P.Nos.34652 of 2019 and 7280 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.Nos.34652 of 2019 and 7280 of 2020
and W.M.P.Nos.35404 of 2019 & 8679 and 8680 of 2020

W.P.No.34652 of 2019

- 1 A.Periyasamy (Deceased)
- 2 Kalpana
(P2 substituted as legal representative
of deceased sole Petitioner vide order
dt. 06.07.2021 made in WMP.14235/2021) ... Petitioners

Vs

- 1 The Deputy Director
North cum Sub Divisional Magistrate Revenue
Complex Ground Floor No.505 Kamaraj Salai
New Saram Puducherry-605 013.
- 2 The Chief Town Planner
Town and Country Planning Department
Municipality Office Jawahar Nagar
Boomianmpet Puducherry-605 005.
- 3 The Superintendent of Police
(East) Jawaharlal Nehru Street
Puducherry-605 001.

W.P.Nos.34652 of 2019 and 7280 of 2020

- 4 The Superintending Engineer
Circle-1 PWD Complex Subash Chandra Bose
Street Puducherry-605 001.
- 5 The Commissioner
Puducherry Municipality Kamban Kalaiararam
Bussy Street Puducherry-605 001.
- 6 The Joint Chief Controller of
Explosives A and D Wing Block 1-8 Shastri
Bhavan No.26 Haddows Road
Nungambakkam, Chennai-6.
- 7 M/s.Shell India Markets Pvt.
Ltd 2nd Floor Campus-4A RMZ Millennia
Business Park No.143 Dr. MGR Road
Perungudi Chennai-96. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to permanently forbear the respondents from issuing No Objection Certificate (NOC), Explosive License and other approval/ permission/ consent to the 7th respondent to set up and operate a New Road-side Petroleum Retail Outlet at Ward B, Block No.8, T.S.No.2, R.S.No.135/2 (Part), M.G.Road, Muthialpet, Puducherry-605 003, in close proximity to 2 Nos. of Government Anganwadis, Bharathidasan Government College for Women and several public places and in violation to IRC Circular No.12:2009.

W.P.No.7280 of 2020

- 1 A.Periyasamy (Deceased)
- 2 Kalpana
(P2 substituted as legal representative
of deceased sole petitioner vide order
dt.06/07/2021 in WMP.14235/2021) ... Petitioners

Vs

Page 2 of 15

W.P.Nos.34652 of 2019 and 7280 of 2020

- 1 The District Magistrate
New Revenue Complex 1st Floor Vazhuthavoor
Road Puducherry 605 009
 - 2 The Chief Town Planner
Town and Country Planning Department
Municipality Office Jawahar Nagar
Boomianpet Puducherry 605 005
 - 3 The Superintendent of Police
(East) Jawaharlal Nehru Street
Puducherry 605 001
 - 4 The Executive Engineer
Buildings and Roads (Central Division)
PWD Complex Puducherry 605 001
 - 5 The Commissioner
Puducherry Municipality Kamban Kalaiararam
Bussy Street Puducherry 605 001
 - 6 The Joint Chief Controller of Explosives
A and D Wing Block 1-8
Shastri Bhavan No.26 Haddows Road
Nungambakkam Chennai 600 006.
 - 7 M/s.Shell India Markets Pvt. Ltd.
Plot No.7 Bangalore Hardware Park
Devanahalli Industrial Park Mahadeva
Kodigehalli Bangalore 562 149 ...
- Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the No Objection Certificate No.4488/DM/RO/TAH/D3/2019 Dated 11.11.2019 issued by the 1st respondent in favour of the 7th respondent to open and operate a New Road-side Petroleum Retail Outlet at Ward B Block No.8 T.S.No.2 R.S.No.135/2 (part)

W.P.Nos.34652 of 2019 and 7280 of 2020

M.G.Road Muthialpet Puducherry 605 003 in close proximity to 2 Nos. of Government Anganwadis Bharathidasan Govt. College for Women and several public places and in violation to IRC Circular No.12:2009 and to quash the same.

For Petitioner in
both WPs. : Mr.V.B.R.Menon

For Respondents in
both WPs. : Mrs.N.Mala
Government Pleader (Puducherry)
for RR 1 to 5

: Mr.S.Muthusamy,
ACGSC, for R-6

: Mr.P.S.Raman, Senior Counsel,
Assisted by Mr.Jose John,
M.Narendran and Joshua Ebenezer,
for M/s.King & Patridge, for R-7

* * * * *

COMMON ORDER

(Made by the Hon'ble Chief Justice)

These two petitions pertain to a proposed petroleum retail outlet on Mahatma Gandhi Road in the heart of Puducherry proper and the petitioner, espousing a public cause, refers to the failure by the private petroleum company and the local authorities in taking relevant considerations into account before choosing the site for the retail outlet.

W.P.Nos.34652 of 2019 and 7280 of 2020

2. Shell India Markets Pvt. Ltd proposes to set up a company owned and managed retail outlet at the site. The said private company, arrayed as the seventh respondent in both the petitions, has obtained permission by way of a no-objection certificate dated November 11, 2019 from the local government. W.P.No.34652 of 2019 was filed even before the permission had been obtained and its purpose was to obtain a direction on the appropriate authorities to ensure that no permission in such regard was granted. After the permission was obtained, W.P.No.7280 of 2020 was filed challenging the issuance of the no-objection certificate.

3. Three principal grounds have been taken by the petitioner in opposing the setting up of the petrol outlet at the relevant site. The petitioner complains that the proposed site is perilously close to residential buildings and is in the heart of the most populated part of town. The petitioner also relies on photographs of the site and the sketch-map that had been filed by the private oil company to obtain permission to demonstrate that the proposed site is at an intersection of a main road with a narrower side road. The third count of objection

W.P.Nos.34652 of 2019 and 7280 of 2020

is that the proposed outlet does not maintain the appropriate distance norms, as it ought to have been at least 100 metre away from any other Anganwadi facility.

4. In support of the first contention that the proposed site is in the middle of a residential hub, the petitioner refers to an order dated September 5, 2017 passed on W.P.No.23546 of 2017 (*B.Moorthi vs. The District Revenue Officer*) by a Division Bench of this court. At paragraph 4 of the Division Bench judgment, the court referred to the health hazards caused by evaporation of petroleum in and around the outlets. The Bench went on to observe that the effects of contamination at petrol stations can be felt in buildings located within 100 metre and referred to articles based on research indicating that airborne organic compounds, like benzene, increase the risk of cancer. The Bench also referred to the deleterious effect of setting up a petrol pump near any place which houses a substantial number of children.

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5. The further case of the petitioner is that the Indian Roads Congress (IRC) has issued guidelines in 2009, generally referred to

W.P.Nos.34652 of 2019 and 7280 of 2020

as IRC:12-2009 for roadside fuel and service stations. The petitioner points out that the avowed purpose for issuing such guidelines was to ensure the free flow of traffic on the roads along the fuel stations and the minimum disturbance to other vehicular movement by vehicles using the facilities. Among the conditions indicated in IRC:12-2009, there is an instruction that in an urban area with a population of over one lakh there should be a 100 metre distance between the site of a petrol outlet and the intersection with any category of road, irrespective of the width of the carriageway. In the present case, however, the proposed site has an immediate road in the front and two roads immediately on the two sides, though it is possible that there is only one side road. At first blush, on the basis of the requirement in such regard in the guidelines issued by the IRC, it seems that there has been aberration in this case. The petitioner goes on to rely on a Supreme Court judgment reported at (2016) 15 SCC 480 (*Indian Oil Corporation Limited vs. Arti Devi Dangi*) and places paragraphs 1 and 7 from the report.

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6. In that case, an advertisement issued by the oil company required the rules and sub-rules of the local PWD to be followed and

W.P.Nos.34652 of 2019 and 7280 of 2020

the rules of the local PWD incorporated the IRC Guidelines 12-2009. Thus, one of the tender conditions was that the site should be such as would conform to the local PWD norms as per the applicable rules and sub-rules and, when it was discovered that the site offered by the contractor was inappropriate on such ground, the oil company was entitled to disregard the offer or otherwise cancel the acceptance thereof.

7. On the distance norm, the petitioner refers to the Petroleum Rules, 2002 and says that even though more stringent norms have now come into place with the Central Pollution Control Board having issued strict guidelines at the prodding of the National Green Tribunal, even the rudimentary safety norms have not been met in this case.

8. The private oil company here submits that there is no specific distance norm that is shown to have been breached and the fact that the proposed site is in a residential area does not violate any norm or guideline that may have been in vogue at the time that the application to set up shop was considered and the no-objection

W.P.Nos.34652 of 2019 and 7280 of 2020

certificate was issued on November 11, 2019. 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 (*Durairaj Venkatachalam vs. Additional Chief Secretary, Revenue and Disaster Management Department*) and another rendered on W.P. (MD) No.2895 of 2020 (*M.G.Saravanan*

W.P.Nos.34652 of 2019 and 7280 of 2020

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.

10. However, it must also be noticed that before the District Collector issued the no-objection certificate on November 11, 2019, an opinion was sought from the PWD as to the feasibility of the site, particularly pertaining to its effect on vehicular traffic. The petitioner has relied on the adverse report given by the PWD in such regard. However, the no-objection certificate did not refer to the adverse opinion of PWD, though it specified that the layout of the fuel filling station should conform to IRC:12-2009.

11. The Union Territory of Puducherry is represented and it stands by the District Collector's decision to grant permission.

12. Though the petitioner appears to have had public interest in mind and felt concerned for those residing near the proposed site, it

W.P.Nos.34652 of 2019 and 7280 of 2020

cannot be said that the permission granted by the issuance of the no-objection certificate on November 11, 2019 is invalid or the Collector acted in breach of any statutory norms while granting the permission or the private oil company has acted at variance with the conditions set in the no-objection certificate.

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

W.P.Nos.34652 of 2019 and 7280 of 2020

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 at least 15 metre shy of M.G.Road to allow the smooth flow of traffic, especially vehicles entering or exiting the fuel station.

W.P.Nos.34652 of 2019 and 7280 of 2020

15. The additional safety norms, including the installation of a Vapour Recovery System (VRS), are imposed in public interest, particularly since the no-objection certificate of November 11, 2019 referred to the layout conditions indicated in IRC:12-2009, notwithstanding such guidelines being held by this court not to be mandatory.

W.P.Nos.34652 of 2019 and 7280 of 2020 are disposed of. WMP Nos.35404 of 2019, 8679 and 8680 of 2020 are closed. There will be no order as to costs.

(S.B., CJ.) (P.D.A., J.)
10.08.2021

Index : no

sra

To:

- 1 The Deputy Director
North cum Sub Divisional Magistrate Revenue
Complex Ground Floor No.505 Kamaraj Salai
New Saram Puducherry-605 013.
- 2 The Chief Town Planner
Town and Country Planning Department
Municipality Office Jawahar Nagar
Boomianmpet Puducherry-605 001.

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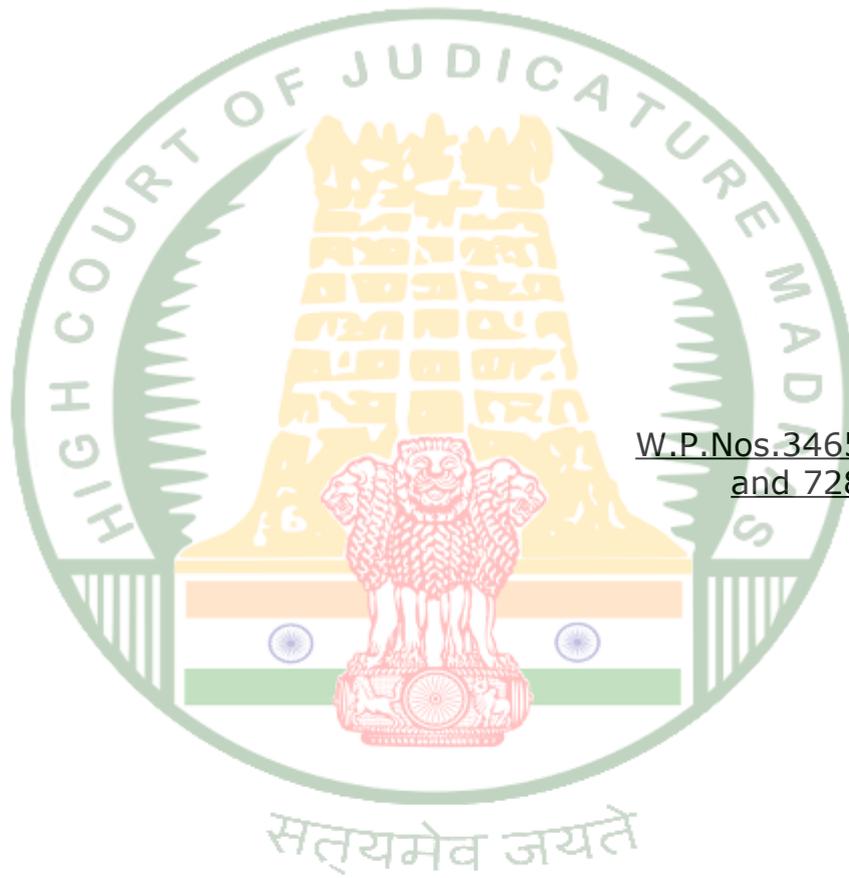
- 3 The Superintendent of Police
(East) Jawaharlal Nehru Street
Puducherry-605 001.
- 4 The Superintending Engineer
Circle-1 PWD Complex Subash Chandra Bose
Street Puducherry-605 001.
- 5 The Commissioner
Puducherry Municipality Kamban Kalaiaragam
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- 6 The Joint Chief Controller of
Explosives A and D Wing Block 1-8 Shastri
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- 7 M/s.Shell India Markets Pvt.
Ltd 2nd Floor Campus-4A RMZ Millennia
Business Park No.143 Dr. MGR Road
Perungudi Chennai-96.
- 8 The District Magistrate
New Revenue Complex 1st Floor Vazhuthavoor
Road Puducherry 605 009
- 9 The Executive Engineer
Buildings and Roads (Central Division)
PWD Complex Puducherry 605 001

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W.P.Nos.34652 of 2019 and 7280 of 2020

THE HON'BLE CHIEF JUSTICE
AND
P.D.AUDIKEVALU, J.

(sra)



W.P.Nos.34652 of 2019
and 7280 of 2020

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10.08.2021

Pending applications, if any, also stand disposed of.

**(MUKESH NASA)
COURT MASTER**

**(VIRENDER SINGH)
BRANCH OFFICER**



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Thursday, the Second day of September Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice SENTHILKUMAR RAMAMOORTHY

WP(MD) No.8355 of 2021

in

WMP(MD) No.10047 and 10718 of 2021 and 6328 of 2021

R.SANTHI

... PETITIONER/PETITIONER

Vs

1 THE JOINT CHIEF CONTROLLER OF EXPLOSIVES,
A AND D WING, BLOCK 1-8, 2ND FLOOR,
SASTRI BHAVAN, 26, HADDOWS ROAD,
NUNGAMBAKKAM, CHENNAI 600 006

2 THE DISTRICT COLLECTOR / THE DISTRICT MAGISTRATE,
VIRUDHUNAGAR,
VIRUDHUNAGAR DISTRICT.

3 THE DISTRICT REVENUE OFFICER,
VIRUDHUNAGAR, VIRUDHUNAGAR DISTRICT.

4 REVENUE DIVISIONAL OFFICER
SATTUR, VIRUDHUNAGAR DISTRICT.

5 CENTRAL POLLUTION CONTROL BOARD,
REP. BY ITS MEMBER SECRETARY,
76, MOUNT SALAI, GUINDY, CHENNAI 600 032

6 T.MEKALA

**(*) 7 THE INDIAN OIL CORPORATION,
REP BY ITS THE DIVISIONAL MANAGER, MADURAI
DIVISIONAL OFFICE,
NO.2, RACE COURSE ROAD,
CHOKKIKULAM, MADURAI-625002.**

**(*) (R7 IS IMPEADED VIDE COURT ORDER
DATED 28.04.2021 IN WMP (MD)
No.6639/2021 IN WP (MD) No.8355/2021)**

... RESPONDENTS/RESPONDENTS



Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue a Writ of Mandamus or any other appropriate order of direction in the nature of writ, by directing the 3rd respondent to cancel the NOC dated 16.06.2020 granted in favour of the 6th respondent for running petroleum outlet and consequentially forbearing the respondents from setting up and running petroleum outlet in S.No.4/2, (Ward B, Block1) Sattur Village, Virudhunagar District.

Prayer in WMP(MD). 10047/ 2021 :

To accept this Affidavit and vacate the interim order made in W.M.P. (MD) No.6328 of 2021 in W.P. (MD) NO.8355 of 2021, dated 28.04.2021.

Prayer in WMP(MD). 10718/ 2021 :

To vacate the interim order passed in W.M.P.(MD) NO.6328 of 2021 in W.P. (MD) No. 8355 of 2021, dated 28.04.2021.

Prayer in WMP(MD). 6328/ 2021 :

To pass an order of injunction restraining the 6th respondent his men, agents or servants anybody claiming through them from functioning of the petroleum outlet viz Shree Krishna oil agencies 2/2, Old trunk road, situated in S.No.4/2, (Ward B, Block1) Sattur Village, Virudhunagar District, pending disposal of the above Writ petition.

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.S.VENKATESH, Advocate for the petitioner and of Mr.S.JEYASINGH on behalf of the 1st Respondent and of Mr.P.SUBBARAJ, Counsel for state on behalf of the respondents 2 to 4 and of Mr.K.GOVINDARAJAN for Mr.A.BALAJI, on behalf of the 6th respondent and of Mr.K.MURALEEDHARAN, on behalf of the 7th respondent, the Court made the following order:-

The petitioner seeks cancellation of the No Objection Certificate dated 16.06.2020, which was issued by the third respondent in favour of the sixth respondent herein.

2. The petitioner complains of the establishment of a fuel retail outlet by the sixth respondent as dealer of the Indian Oil Corporation. At the time of admission, an interim injunction was granted by order dated 28.04.2021. The sixth respondent has filed W.M.P(MD)No.10047 of 2021 to vacate the said order of interim injunction.

3. Similarly, the Indian Oil Corporation has also filed a petition to vacate the above mentioned interim order in W.M.P(MD) No.10718/2021.

<https://www.judges.org/>



4. The petitioner contends that the petroleum retail outlet has been established in violation of the order dated 22.07.2019 of the National Green Tribunal, New Delhi in I.A.No.7 of 2019 in O.A.No.31 of 2019. It is stated that guidelines were issued by the Central Pollution Control Board on 07.01.2020 pursuant to the above mentioned order of the National Green Tribunal. As per the said guidelines, it is stated that no new fuel retail outlets should be established at a distance less than 30 metres from Schools, Hospitals and residential areas. In addition, it is stated that no new outlets should be established unless the radial distance between the filling point/dispensing unit/vent pipe is at least 50 metres from Schools, Hospitals and residential areas designated by local laws. The petitioner also contends that the fuel retail outlet of the sixth respondent violates the licence conditions prescribed by Petroleum and Explosives Safety Organization (PESO). In particular, it is alleged that condition No.5, which specifies that the vent pipe should not be less than 4 metres from any adjoining land or property, has been violated in the present case. The third contention of the petitioner is that the No Objection Certificate was granted by the third respondent without conducting an inquiry as mandated by the Petroleum Rules and, in particular, Rule 144 thereof.

5. On the contrary, the sixth respondent contends that the ad interim order was obtained by suppressing material facts. The sixth respondent refers to paragraph No.2 of the affidavit and points out that the petitioner averred that the petroleum retail outlet is in the process of being established, whereas the sixth respondent had operationalized the petroleum retail outlet in November 2020.

6. As regards the order dated 22.07.2019 of the National Green Tribunal and the guidelines issued in pursuance thereof, the sixth respondent points out that the said order and the guidelines are applicable only for residential areas. The site of the petroleum retail outlet, in this case, is in a commercial and business area. In support of this contention, the sixth respondent relies upon the Certificate issued by the Sattur Municipality on 06.10.2020. The sixth respondent also relies upon the Inspection Report of the PESO dated 05.02.2021. By drawing reference to the said report, it is pointed out that PESO concluded upon inspecting the premises on 05.01.2021 that the premises has been established in accordance with the approved plan in all respects. In particular, it is pointed out that the said report mentions that the required safety distances around filling points, vent pipes and dispensing units were maintained. The next contention of the sixth respondent is that the petitioner suppressed the fact that his complaint was responded to by PESO. In this connection, paragraph No.3 of the counter affidavit of PESO is referred to wherein it is stated that the petitioner was informed of the outcome of the inspection of the petroleum Retail letter dated 01.03.2021. The sixth respondent points out



that the present Writ Petition was filed in April 2021 and in spite of the same, the above outcome of inspection has been suppressed by the petitioner.

7. The Indian Oil Corporation points out that the petroleum retail outlet was established after obtaining the necessary licence from PESO. In addition, the requisite No Objection Certificate was obtained from the third respondent. The Indian Oil Corporation submits that prior to the grant of licence, PESO inspected the site and agreed to grant the licence because the fuel retail outlet, including the filling points, was in conformity with applicable norms in such regard.

8. The State has filed a counter affidavit stating that the NOC was issued by adverting to the prescribed procedure in such regard. Likewise, the first respondent has filed a counter affidavit, which draws reference to the grant of licence in Form-14 of the Petroleum Rules, 2002.

9. Upon consideration of the rival contentions and the pleadings of the respective parties, it is clear that the sheet anchor of the petitioner's case is the order of the National Green Tribunal dated 22.07.2019 and the guidelines issued in pursuance thereto. Therefore, it is necessary to consider the said aspect. The petitioner relies on the siting criteria of retail outlets, which reads as under:

'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 metres (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 metres 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 metres. No high tension line shall pass over the retail outlet''.

10. From the above, it appears that the distance criteria specified in the guidelines are applicable to residential areas designated as per local laws. In the case at hand, the sixth respondent has produced a copy of the classification certificate relating to the relevant site. Such classification certificate indicates that the land is classified as shops and business premises



11. Therefore, the guidelines issued by the Central Pollution Control Board do not appear to apply to an area classified as shops and business premises area. The second aspect is that the grant of licence to a petroleum retail outlet is to be done in accordance with the Petroleum Rules by PESO. In the case at hand, PESO has admittedly granted the necessary licence. Indeed, in response to a complaint from the petitioner's husband, the matter has been re-examined by PESO. Upon re-inspection on 05.01.2021, PESO has concluded that the petroleum retail outlet, including filling points and vent pipes have been set up in compliance with the requisite distance norms.

12. The third aspect to be borne in mind is that the petroleum retail outlet has been operationalized in November 2020. Although the petitioner contends that he did not make a misrepresentation to the effect that the petroleum retail outlet had not been established, paragraph No.2 of the affidavit certainly gives such impression. In any event, the balance of convenience shifts considerably in the context of a functioning petroleum retail outlet.

13. Therefore, taking into consideration the fact that PESO has given the green signal for the establishment of the petroleum retail outlet and the third respondent has also granted a No Objection Certificate, the facts and circumstances do not justify the continuation of the ad interim order. Consequently, the order dated 28.04.2021 is vacated. W.M.P(MD)No.6328 of 2021 is dismissed and W.M.P.(MD)Nos. 10718 of 2021 and 10047 of 2021 are allowed.

14. Let the main Writ Petition be posted after four weeks.

sd/-

02/09/2021

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/ /2021

सत्यमेव जयते

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note :In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

1 THE JOINT CHIEF CONTROLLER OF EXPLOSIVES,
A AND D WING, BLOCK 1-8, 2ND FLOOR,
SASTRI BHAVAN, 26, HADDOWS ROAD,

<https://www.nungambakkam.com>, CHENNAI 600 006



- 2 THE DISTRICT COLLECTOR / THE
DISTRICT MAGISTRATE,, VIRUDHUNAGAR,
VIRUDHUNAGAR DISTRICT.
- 3 THE DISTRICT REVENUE OFFICER,
VIRUDHUNAGAR, VIRUDHUNAGAR DISTRICT.
- 4 REVENUE DIVISIONAL OFFICER
SATTUR, VIRUDHUNAGAR DISTRICT.
- 5 CENTRAL POLLUTION CONTROL BOARD,
76,MOUNT SALAI, GUINDY, CHENNAI 600 032
- 6 THE INDIAN OIL CORPORATION,
MADURAI DIVISIONAL OFFICE,
NO.2, RACE COURSE ROAD,
CHOKKIKULAM, MADURAI-625002.

- +1. C.C. to M/S.S.VENKATESH, Advocate SR.No.5956
+1. C.C. to M/S.S.JEYASINGH, Advocate SR.No.5964

ORDER
IN
WP(MD) No.8355 of 2021
in
WMP(MD) No.10047 and
10718 of 2021 and 6328 of 2021
Date :02/09/2021

SS/JM/SAR-IV/08.09.2021 : 6P/9C

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