

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

APPLICATION NO. 22 OF 2021 (SZ)

D. Vijayaragavan
S/o. Duraisamy,

... Applicant

VERSUS

1. The Commissioner of Police,
Greater Chennai Police & 6 others

...Respondents

TYPED SET OF PAPERS

INDEX		
Sl.No	Particulars	Page No
1.	Objections to the Joint Committee Report, filed on behalf of the 7 th Respondent	1
2.	Letter dated 08.07.2021 issued by the Commissioner, Tambaram Municipality to BPCL	8
3.	Letter dated 15.02.2021 issued by the Medical officer, Urban Primary Health Centre, Ranganathapuram, Tamabaram Municipality.	9
4.	Judgment of the Hon'ble Madras High court in W.P.No. 35885 of 2019 dated 11.03.2021	10

Dated at Chennai on this the 15th day of July, 2021.

E-Filing No. :

Date : 15.07.2021



M/s.AAV PARTNERS

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

APPLICATION NO. 22 OF 2021 (SZ)

D. Vijayaragavan
S/o. Duraisamy,
New No. 36, Old No.2, Alagesan Street,
West Tambaram,
Chennai – 600 045
Chengalpattu District

... Applicant

VERSUS

1. The Commissioner of Police,
Greater Chennai Police
No.132, Commissioner Officer Building,
EVK Sampath Road,
Vepery, Periyamet,
Chennai – 600 007
2. The District Environmental Engineer,
Tamilnadu Pollution Control Board,
Maraimalai Adigalar Street, Maraimala Nagar,
Chennai – 603 209
Chengalpattu District
3. The Joint Chief Controller of Explosives,
A and D Wing, Block 1-8,
2nd Floor, Shastri Bhavan,
No.26, Haddows Road,
Nungambakkam
Chennai – 600 006,
4. The District Collector,
Chengalpattu District,
District Collector Office,
GST Road, Chengalpattu – 603 001
5. The commissioner,
Tambaram Municipality,
No.28, Muthuranga Mudali Street,
Tambaram West, Tambaram
Chennai – 600 045



Territory Manager (Retail)
BHARAT PETROLEUM CORPORATION LTD.
No. 35, Vaidyanathan Street,
Tondiarpet, Chennai-600 081.

6. The Divisional Engineer (H)
Construction and Maintenance,
Highways Department
Chennai City Road Division,
No.394/4, Anna Salai, Saidapet
Chennai – 600 015
7. M/s Bharat Petroleum Corporation Ltd.,
Rep.by : The State Head (Retail)
Southern Region Office,
No.1, Ranganathan Gardens,
Off. 11th Main road, Anna Nagar,
Chennai – 600 040

... Respondents

**OBJECTIONS TO THE JOINT COMMITTEE REPORT, FILED
ON BEHALF OF THE 7th RESPONDENT**

I, Gururaj Nagappa Sankh, Son of Mr. Nagappa G Sankh, aged 39 years, having office address at No.35 Vaidyanathan Street, Tondiarpet, Chennai 600 081, working as Territory Manager (Retail), Chennai, Bharat Petroleum Corporation Limited do hereby solemnly affirm and sincerely state as follows:

1. I state that I am the Territory Manager (Retail), Chennai, representing the 7th Respondent herein and as such I am well acquainted with the facts of the case from the available records and I am authorized to file these objections to the joint committee report on behalf of the seventh Respondent.

2. I humbly submit that the present application has been filed under Section 18(1) read with Section 14(1) of the National Green Tribunal, Act, 2020, for the following relief:

"A. *permanently forbear the 7th Respondent to opening and operating a New Road-side Petroleum Retail Outlet at Survey T.S.No: 77, Tambaram Municipality at New Door No: 28 (Old No:*

1), Alagesan Street, West Tambaram, Chennai- 600 045, Chengalpattu District in violation to the siting criteria prescribed by the Central Pollution Control Board (CPCB) in Clause "H" of the Office memorandum No. B-13011/1/2019-20/AQM/10802-1087 dated 07.01.2020 and the norms prescribed under the Circular No.12-2009 by the Indian Road Congress.

And

B. pass such further order or orders as may be fit and proper and necessary in the facts and circumstances of the case and thus render justice"

3. I humbly Submit that this Hon'ble Tribunal in its order dated 03.02.2021 has directed inter alia as follows:

"8. In an earlier case this Tribunal had constituted a joint committee. So we feel that with slight modification, similar committee can be constituted in this case also to look into the issue and submit a report. So a joint committee is constituted comprising of (1) the District Collector, Chengalpattu District, or a Senior Officer not below the rank of Assistant Collector or Sub Divisional Magistrate to be designated by the District Collector and (2) a Senior Officer from Tamil Nadu Pollution Control Board (TNPCB) as designated by its Chairman to inspect the area in question and submit a factual as well as action taken report if there is any violation found.

9. The committee is directed to ascertain as to whether the Siting Criteria has been complied with and also the distance between the nearest houses, the proposed petroleum outlet and whether necessary permission and consent etc., have been obtained by them for this purpose and if there is any violation found then, the proposed action to be taken also to be suggested.

10. The Tamil Nadu Pollution Control Board (TNPCB) will be the nodal agency for co-ordination and for providing necessary logistics for this purpose.


Territory Manager (Retail)
BHARAT PETROLEUM CORPORATION LTD.
No. 35, Vaidyanathan Street,
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11. *The committee is directed to submit the report to this Tribunal on or before 18.02.2021, on which date similar cases namely O. A. No. 167 of 2020 and O.A. No. 176 of 2020 are posted, by e-filing in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF along with necessary hard copies to be produced as per rules."*

4. I humbly submit that as directed by this Hon'ble Tribunal, the Joint Committee has inspected the site in question and filed its report before this Hon'ble Tribunal.

5. I humbly submit that the joint committee in its report observed as follows:

"....."

6. *The proposed outlet is adjacent to the residences and commercial shops in east and southern sides.*

7. *Government Urban Primary Health Center with 10 beds is operating within a distance of 30 meters. The said health care facility has obtained consent of the board vide Procs.N.F.2139 MMN/OS/DEE/TNPCB/MMN/W&A/2019 dated 13/05/2019 valid up to 31/03/2029*

....."

6. I humbly submit that the joint committee in its report recommended as follows:

"The proposed petroleum outlet is not satisfying the siting criteria prescribed by the Central Pollution Control Board in clause H of the Guidelines vide office memorandum B-1300/1/2019-20/AQM dated 7th Jan 2020, since it is located in the mixed residential zone as per the Tambaram Municipality, residences are located adjacent to the proposed outlet, healthcare facility having bed strength of 10Nos is located within 30 Meters, hence the Petroleum and Explosives Safety Organization (PESO) shall be directed to revisit the approval accorded to the proposed outlet

vide approval No.A/P/SC/TN/14/9669 (P467698) dated 03.02.2020 in accordance with the above said CPCB guidelines."

7. I humbly submit that nothing contained in this Objections shall be construed as an admission of any statement or averment made in the present Application save and except what has specifically been admitted by the answering Respondent herein.

8. I humbly submit that the answering Respondent denies each and every averment, which is contrary to and/or inconsistent with what is stated in this Objections, as if the same were specifically traversed.

9. I humbly submit that the instant objections are being filed in order to bring out the true and correct factual position and to specifically deal with the averments made in the Joint Committee Report.

10. I humbly submits that, this respondent has proposed to establish fuel retail outlet as T.S No. 77, Tambaram Municipality at Door No. 28 (old No.1), Alagesan Street, West Tambaram, Chennai-600045 and obtained necessary permissions from the competent authorities such as PESO, Local body, Commissioner of police as per the prevailing rules and in accordance with law.

11. I humbly submit that it is wrong to state that the Government Urban Primary Health Center with 10 beds is operating within a distance of 30 meters. The commissioner, Tambaram Municipality in its letter Roc.No.1840/2021/H1 dated 08.07.2021 stated that the Upgraded Primary Health Centre of Tambaram Municipality at Ranganathapuram has 3 bedded facility to do normal deliveries and it is an out patients Treatment Health Center only ,which is also confirmed by the said health care center in its letter dated 15.02.2021 and the same is not a hospital. Hence the CPCB guidelines will not apply to the above subject Retail Outlet. Further, the said health care center will not come within the purview of the hospital and therefore, the hospital referred to in the CPCB guidelines will not apply to the health care facility.

 Territory Manager (Retail)
BHARAT PETROLEUM CORPORATION LTD.
No. 35, Vaidyanathan Street,
Tondiarpet, Chennai-600 081.

12. I humbly submit that as per the CPCB Guideline, dated 07.01.2020, Clause H of the siting Criteria for retail outlets stipulates, minimum safe aerial distance with the nearest schools, hospitals (10 beds and above) and residential areas designated as per local laws. It is to be noted that the primary health center diagonally opposite to proposed site is not a hospital within 10 beds and above. It is operating with only 3 beds hence the minimum distance of 50 meters distance is not applicable, the next nearest hospital with 10 beds and above (Sudha Hospital) at 86 meters from the fuel station which had been shown clearly in the topo plan submitted to PESO.

13. I humbly submit that the joint committee in its report has not stated from which point the distance was measured. Further there is no mentioning about the distance of the residential building situated adjacent to the proposed site. It is mandated under the above guidelines of CPCB, that the distance shall be measured from the fill point/dispensing units/ vent pipe.

14. I humbly submit that this particular area surrounding the retail outlet is not a pure residential area as per the CMDA Plan and also as per NOC issued by commissioner, Tambaram Municipality, it's a mixed residential area with lot of commercial establishments and buildings surrounding the proposed petroleum site. Hence, there is no violation of siting criteria as prescribed by CPCB for development of retail outlet

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

Dated at Chennai on this the 15th day of July, 2021



7th RESPONDENT
Territory Manager (Retail)
BHARAT PETROLEUM CORPORATION LTD.
No. 35, Vaidyanathan Street,
Tondiarpet, Chennai-600 081.

VERIFICATION

I, Gururaj Nagappa Sankh, Son of Mr. Nagappa G Sankh, aged 39 years, having office address at No.35 Vaidyanathan Street, Tondiarpet, Chennai 600 081, working as Territory Manager (Retail), Chennai, Bharat Petroleum Corporation Limited, do hereby verify that the contents of Paragraph Nos. 1 to 19 are true to the best of my knowledge and Paragraph Nos. 1 to 19 are believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Chennai on this the 15th day of July, 2021

**7th RESPONDENT**

Territory Manager (Retail)
BHARAT PETROLEUM CORPORATION LTD.
No. 35, Vaidyanathan Street,
Tondiarpet, Chennai-600 081.

தேசிய நகர்ப்புற சுகாதார திட்டம்

தாம்பரம் நகராட்சி

தாம்பரம் பெருநகராட்சி மருத்துவமனை

ரங்கநாதபுரம் நகர்ப்புற பஸ்துறை ஆரம்ப சுகாதார நிலையம்

ரங்கநாதபுரம், மேற்கு தாம்பரம், சென்னை - 600 045.

ண். :

தேதி : 15/02/2021

பயர். :

வயது :

பகவரி :

Health Post - III

R

1. 3 Beds ^{Ranganathapuram} available.
2. 24x7 (Poly clinic centre)
3. OP, IP, (Observation)
4. Delivery
5. Staff Nurses (2)
6. Medical Offices (1)
7. D/N (4)

Dr. P. Vijayalaxmi
15/02/2021
Medical Officer
Urban Primary Health Centre
Ranganathapuram,
Tambaram, Municipality

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

1/24

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

3/24

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

6/24

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

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.

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

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

12/24

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

17/24

this Court have not raised any objection whatsoever for setting up of the petrol bunk by the fifth respondent in the subject location. Hence, it is clear that there is no illegality committed by the second respondent in granting No Objection Certificate to the fifth respondent for setting up a petrol bunk in the subject location.

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

and the fifth respondent is also not a party in those litigations. Therefore, this Court is of the considered view that insofar as the first issue for consideration namely whether Indian Road Congress Guidelines is mandatory or not will have to be answered in favour of the fifth respondent by holding Indian Road Congress Guidelines are not mandatory.

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*

(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

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

22/24

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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W.P.No.35885 of 2019

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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24/24