

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR



PRESENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 19036 OF 2024

Between:

K. Venakat Suresh Kumar Naidu, S/o Venkat Subbaiah Aged 44 years,
Occ. Business, R/o D.No. 19-4-3H/B1, Raghunadha Reddy Colony, S.T.V
Nagar, Tirupati

...PETITIONER

AND

1. Indian Oil Corporation Ltd., Rep by its Divisional Retail Head, Divisional Office D.No- 8-115/1, 1st floor MM Complex, RC Road, Tirupati.
2. The District Collector, Annamayya District, Rayachoti.
3. The Superintendent of Police, Annamayya District, Rayachoti.
4. District Chief Fire Officer, Annamayya District, Rayachoti.
5. Revenue Divisional Officer, Rajampet Revenue Division, Rajampet, Annamayya District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ order or direction particularly one in the nature of Writ of Mandamus declaring the action of a) the action of the 1st respondent

herein in proposing to establish Petroleum outlet in Sy.No. 398 of Rajampet Revenue Village, Annamayya District, b)the action of 2nd respondent herein in issuing the Letter of Intent vide Ref. No.2023/IN000237/AP./000018/4404/00006 dated.11.03.2024 And c)in granting No Objection Certificate vide proceedings C1/17157/2024 dated 30.08.2024 in favour of the 1st petitioner for establishment of petroleum outlet in Sy.No.398 of Rajampet Revenue Village, Annamayya District as highly arbitrary and illegal and null and void and contrary to the guidelines framed by the Indian Road Congress for establishment of petroleum outlets and violation of Article 19 1 g of the Constitution of India and consequently to quash the above said LOI and the grant No Objection Certificate, and to pass such other order or orders as this Honble Court deem fit and proper in the interest of justice.

(Prayer is amended as per the CO dt.19.09.2024 vide orders passed in IA No.02 of 2024.)

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondent authorities not to accord 'No Objection Certificate' in favor of the 1st respondent for the location in Sy. No. 398 of Rajampet revenue village and Rajampet Mandal, Annamayya District for establishing the Petroleum Outlet, pending disposal of the above said writ petition pending disposal of the above writ petition.

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to issue a writ order or direction more particularly one in the nature of Writ of Mandamus declaring; a.) the action of the T' respondent herein in proposing

to establish Petroleum outlet in Sy. No. 398 of Rajampet Revenue Village, Annamayya District, b.) the action of 2nd respondent herein in issuing the Letter of Intent vide Ref. No. 2023/IN000237/AP./000018/4404/00006 dated 11.03.2024 and c.) in granting No Objection Certificate vide proceedings CI/17157/2024 dated 30.08.2024 in favour of the 1st petitioner for establishment of petroleum outlet in Sy.No.398 of Rajampet Revenue Village, Annamayya District, highly arbitrary and illegal and null and void and contrary to the guidelines as framed by the Indian Road Congress for establishment of petroleum outlets and violation of Article 19 (1) (g) of the Constitution of India and consequently to quash the above said LOI and the grant "No Objection Certificate".

Counsel for the Petitioner: SRI BALAJI MEDAMALLI

Counsel for the Respondent No.1: SRI S V S SIVA RAM, SC FOR IOCL

Counsel for the Respondent Nos.2 & 5: GP FOR REVENUE

Counsel for the Respondent Nos.3 & 4: GP FOR HOME

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA
WRIT PETITION No.19036 OF 2024

ORDER:-

1. Originally, this writ petition is filed under Article 226 of the Constitution of India, claiming the following relief:

"To issue Writ of Mandamus declaring

(a) the 1st respondent herein in proposing to establish Petroleum Outlet in Sy.No.398 of Rajampet Revenue Village, Annamayya District.

(b) the respondent authorities 3 to 5 in proposing to grant "No Objection Certificate" for retail petroleum outlet in Sy.No.398 of Rajampet Revenue Village and Rajampet Mandal, Annamayya District as arbitrary and illegal;

Consequently to direct the respondent authorities not to grant 'No Objection Certificate' in faovour of the 1st respondent herein for establishment of above said retail petroleum outlet"

2. Vide order of this Court in I.A.No.2 of 2024 dated 19.09.2024, prayer was amended and the amended prayer reads as follows:

"(a) the action of the 1st respondent herein in proposing to establish Petroleum Outlet in Sy.No.398 of Rajampet Revenue Village, Annamayya District;

(b) the action of 2nd respondent herein in issuing the Letter of Intent vide Ref.No.2023/IN000237/AP/000018/4404/00006 dated 11.03.2024 and

(c) in granting No Objection Certificate vide proceedings C1/17157/2024 dated 30.08.2024 in favour of the 1st petitioner for establishment of petroleum outlet in Sy.No.398 of Rajampet Revenue Village, Annamayya District."

3. The case of the petitioner in brief is that the impugned order dated 30.08.2024 passed by Respondent No.5 granting No Objection Certificate to Respondent No.1 to set up a petrol bunk suffers from material irregularities and violates the guidelines issued by the Union Ministry of Road Transport and Highways dated 25.09.2003 as well as the Indian Road Congress Guidelines, 2009.

4. According to the petitioner, the petrol bunk proposed to be set up by Respondent No.1 is within a distance of 80 meters from the petitioner's petrol bunk in Sy.No.398 of Rajampet Revenue Village, Annamayya District. Respondent No.5/District Revenue Officer issued 'No Objection Certificate' to the first respondent/IOCL dated 30.08.2024 for granting license under the Petroleum Rules, 2002. Hence, the minimum distance criteria fixed under the Indian Road Congress Guidelines is 300 meters has been violated. According to the petitioner, this would endanger the lives of the people in and around the

area, as the object of those Guidelines are to ensure safe distance between two retail outlets in order to avoid devastating effects in case of fire accidents.

5. It is the case of the petitioner that, the petitioner has invested huge amount of money for establishing the said outlet and without considering the same and without having regard to the safety aspect and prescribed guidelines, Respondent No.5 granted "No Objection Certificate" to Respondent No.1 on flimsy grounds, which is arbitrary and illegal.
6. Respondent No.3/Superintendent of Police, Annamayya District filed counter affidavit, contending that:
- i. Impugned order is legally correct and not arbitrary;
 - ii. 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;
 - iii. There is no partiality in favour of Respondent No.1 and the official respondents have acted as per law and as per the rules laid in the Petroleum Act and Rules;
 - iv. Official Respondents have obtained all the requisite permission to establish the subject petrol bunk in the subject land.

7. Respondent No.1/IOCI who has been allotted subject petrol bunk by Respondent No.2 filed counter affidavit and would submit that the Indian Road Congress Guidelines are not mandatory and the impugned order has been passed granting 'No Objection Certificate' correctly by applying the settled law that the Indian Congress Guidelines are not mandatory as it will get statutory force only when appropriate rules are framed by the State Government. In fact, no rules were framed by the State of Andhra Pradesh, therefore, the referred guidelines are directory in nature only.

8. The petitioner filed rejoinder to the counter affidavit vide I.A.No.2 of 2024, reiterating the contentions urged in the affidavit, emphasizing the need to reject the No Objection Certificate issued in favour of Respondent No.1, since the same was issued after issuance of LOI, which is contrary to the Petroleum Rules, 2002.

9. During hearing, learned counsel for the petitioner would draw 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 proposed to be established within a radius of 80 meters from the existing petitioner's petrol bunk and hence, it is in violation of Guideline 3.2 and 4.6.2(i) which stipulates that, there shall be minimum distance of 300 m between two fuel stations on both sides of the road.

10. Learned counsel for the petitioner would submit that, the Indian Road Congress Guidelines are mandatory in nature and have to be necessarily adhered to and therefore, while issuing 'No Objection Certificate' for setting up a petrol outlet, Indian Road Congress Guidelines will have to be adhered to. In support of his contentions, learned counsel placed reliance on the judgment of the Hon'ble Apex Court in **Chief Commercial Manager, South Central Railway, Secunderabad and Others v. G. Ratnam**¹. On the strength of the ratio laid down in the above judgment, he would contend that, since the IRC guidelines are directory in nature, the respondents cannot proceed further under the misconception of the guidelines which are directory in nature and sought to set-aside LOI dated 11.03.2024 and "No Objection Certificate" dated 30.08.2024, since the entire exercise is not at all grounded, therefore, the ratio laid down by the Hon'ble Apex Court is squarely applicable. He would further submit that, the petrol retail outlet proposed to be established by Respondent No.1 would infringe the fundamental right of the petitioner guaranteed under Article 19(1)(g) of the Constitution of India.

11. Per contra, Sri S.V.S.S. Sivaram, learned Standing Counsel appearing for Respondent No.1/IOCL and learned Government Pleader for Home would submit that the proposed petrol retail outlet was considered under the

¹ 2007 (8) SCC 212

government agency category, at request of Respondent No.2, but not against any default. Pursuant to the request of Respondent No.2, Respondent No.1 and BPCL (who granted dealership in favour of the petitioner) have participated in auction and submitted bids. Respondent No.1 was selected by Respondent No.2. After such selection, Respondent No.1 was issued letter of intent on 11.03.2024. He submits that the Indian Road Congress Guidelines are direct in nature and not directly binding upon the respondents for every situation and for every action, more particularly, in the case in hand, the subject retail outlet under the category of government agency i.e. in favour of Respondent No.2. The Indian Road Congress Guidelines are not mandatory in nature. He submits that, writ petition has been filed purely out of business motive, as the apprehension of petitioner would loss some business and therefore, not maintainable. In support of his submissions, he relied upon the judgment of this High Court of Andhra Pradesh in W.P.No.2038 of 2020 dated 04.02.2021, W.P.No.31251 of 2023 dated 15.07.2024, wherein the Court held that the guidelines issued by the Indian Road Congress are neither mandatory nor binding, as no condition was set out that these guidelines would apply in the present scenario. There is no *prima facie* case nor balance of convenience in favour of the petitioner, since the petitioner has not made out any grounds for interference of this Court under Article 226 of the Constitution of India and requested to dismiss the writ petition.

12. Heard Sri Balaji Medamalli, learned counsel for the petitioner, Sri S.V.S.S. Sivaram, learned Standing Counsel appearing for Respondent No.1/IOCL and learned Government Pleader for Home and perused the material available on record.

13. The first and foremost contention of the learned counsel for the petitioner is that, Respondent No.1 cannot establish a petroleum retail outlet within 80 meters radius from the retail outlet of the petitioner, as per the guidelines issued by Indian Road Congress.

14. No doubt, the establishment of petroleum stations are governed by the guidelines issued by Central Pollution Control Board vide B-11011/1/2019-20/AQM/10809 dated 07.01.2020. Guideline No.H is relevant for the purpose of deciding the controversy between the petitioner and Respondent No.2 and it is extracted hereunder for better appreciation of the case.

"H. Siting criteria of Retail Outlets:

In case of siting criteria for petrol pumps new Retail Outlets shall not be located within a radial distance of 50 meters (from fill point/dispensing units/vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as

per local laws. In case of constrains in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from schools, hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 meters. No high tension line shall pass over the retail outlet.

These guidelines are supplementary to all existing relevant Rules, Guidelines, Orders etc.”

15. Thus, the above guidelines shall be strictly adhered to while granting 'No Objection Certificate' to establish new retail petroleum outlet. As a part of enquiry, Inspector, Rajampet visited the proposed site, verified the adangal, re-settlement registers belonging to the subject land of R.S.No.398, Rajampet Revenue Village, declared that the proposed site is not disputed land and thereafter recorded the statements of the public and submitted report to the SDPO, Rajampet.

16. Based on the above report, 'No Objection' was reported by the police for establishment of retail petroleum outlet. One of the contentions of the

petitioners is that, Respondent No.2 violated guidelines issued by Indian Road Congress, but, Indian Road Congress is not a statutory authority and those guidelines are not statutory in nature. Therefore, guidelines of Indian Road Congress will have no statutory force.

17. Another contention of the learned counsel for petitioner is that, the "Letter of Intent" which was preceded by 'NOC' issued by the 2nd respondent is also contrary to the Petroleum Rules, 2002 is not a merit submission, for the reason that, without "NOC", letter of appointment cannot be issued, but it is only a "Letter of Intent" it is only a preliminary intention but not permission.

18. The Hon'ble Supreme Court in **Indian Oil Corporation Limited vs. Arti Devi Dangj**² held that, the guidelines of Indian Road Congress are not binding, but the Ministry of Road Transport and Highways has issued certain guidelines on "System Improvement of Installation of Petrol/ Diesel /Gas Retail outlets and Service Stations as well as access to private Properties along National Highways through its Circular No. RW/NH-33023/19/99-DO-III dated 31st August 2000 are binding on the State Government.

² (2016) 15 SCC 480

19. In **M. Simhachalam Babu vs. Union of India**³, learned single Judge of High Court of Andhra Pradesh held that, guidelines framed by the India Road Congress are not at all statutory guidelines and which can be enforced by this Court under Article 226 of the Constitution of India. The same was reiterated by the Madhya Pradesh High Court in **Shailendra vs. Smt. Saroj Bhatia**⁴. Therefore, violation of the guidelines issued by Indian Road Congress is not a ground to interfere with the 'No Objection Certificate' issued by the respondents for establishment of petroleum retail outlet.

20. In the present case, the only grievance of the petitioner is that, if Respondent No.1 is permitted to set up retail outlet within one hundred meters radius of the petitioner's outlet, his business interest would be adversely affected. In the considered opinion of this Court, the petitioner has no *locus standi* at all to complain against the setting up of a rival retail outlet by Respondent No.1, near his place of business, on the ground that would affect his business interest, inasmuch as the damage, if any, suffered thereby was "*damnum sine injuria*" - damage without infringement of legal right. The considered view of this Court, this will only result in promoting healthy 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

³ W.P.No.23519 of 2020 dated 01.09.2021

⁴ An unreported judgment of the Division Bench of Madhya Pradesh High Court dated 24.07.2015 made in Writ Appeal No.568 of 2014

not mean that public interest will suffer rather, it will benefit the consumers because, when there is competition, the businessman are compelled to provide better quality products at reasonable rates.

21. Admittedly, petroleum outlets are set up out of 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 Respondent No.1. There is no material on record placed before this Court to establish that setting up of the petroleum retail outlet by Respondent No.1 at the subject location is dangerous and is against public interest. The Indian Road Congress Guidelines as observed earlier are not mandatory, as such, they do not have any binding statutory force.

22. For the foregoing reasons, there is no merit in this writ petition and accordingly, this writ petition is dismissed. No costs.

23. Consequently, miscellaneous applications pending if any, shall also stand dismissed.

Sd/- B PRASADA RAO
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to Sri Balaji Medamalli Advocate [OPUC]
2. One CC to Sri S.V.S.S.Siva Ram, Advocate [OPUC]
3. Two CCs to GP for Revenue, High Court of Andhra Pradesh [OUT]
4. Two CCs to GP for Home, High Court of Andhra Pradesh [OUT]
5. Three CD Copies

HIGH COURT

DATED:28/10/2024

ORDER

WP.No.19036 of 2024



DISMISSING THE WP WITHOUT COSTS