

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 05TH DAY OF MAY, 2020/15TH VAISAKHA, 1942

W.P(C) TMP NO.204 OF 2020

PETITIONER

SUDHAKARAN.P, AGED 58 YEARS,
S/O LEKSHMIKUTTY,
RESIDING AT VAZHAPPALLIVILAYIL,
KALLELIBHAGAM,
P.O.KALLELIBHAGAM,
KOLLAM DISTRICT.KERALA PIN -690519

BY ADV. SRI.P.K.RAMKUMAR

RESPONDENTS

1. STATE OF KERALA REPRESENTED BY SECRETARY TO
THE PUBLIC WORKS DEPARTMENT
GOVERNMENT SECRETARIAT ,
THIRUVANANTHAPURAM PIN- 695 001
2. BHARATH PETROLEUM CORPORATION LTD, REP BY ITS
TERRITORY MANAGER (RETAIL) IRUMPANAM INSTALLATION
IRUMPANAM, ERNAKULAM- 682309.
3. THE CHIEF ENGINEER PUBLIC WORKS DEPARTMENT,
THIRUVANANTHAPURAM PIN-695001.
4. THE DISTRICT COLLECTOR, KOLLAM,
CIVIL STATION KOLLAM-691013
5. THE ADDITIONAL DISTRICT MAGISTRATE,
OFFICE OF THE DISTRICT COLLECTOR,
KOLLAM-691013.
6. V.N.DEVARAJAN, AGE AND FATHERS NAME NOT KNOWN,
VALIYAPARAMBIL, GRAMAM ENNAKADU P.O.
CHENGANNUR, ALAPUZHA-689624.

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7. THE DISTRICT SUPERINTENDENT OF KOLLAM
SP OFFICE KOLLAM.PIN 691 001

BY SMT.VINITHA B., GOVT. PLEADER

THIS WRIT PETITION HAVING COME UP FOR ORDERS ON
05.05.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(C) TMP No. 204 of 2020

Dated this the 5th day of May, 2020

ORDER

On 28.4.2020, this Court granted an interim order. On 30.4.2020, the learned counsel for the 6th respondent mentioned the matter and pointed out that prejudice has been caused to him on account of the interim order and sought for a posting on 5.5.2020. Accordingly, a posting was given on 5.5.2020. Today a petition to vacate the interim order has also been filed by the 6th respondent.

2. The interim order on 28.4.2020 was granted solely on the assumption that the IRC guidelines had been accepted by the State Government and hence a distance of 300 metres ought to have been provided from the road for the purpose of construction of a petroleum retail outlet. The interim order was also based

upon the assumption that the State Government had adopted the IRC guidelines and in the light of the decision in **Indian Oil Corporation Limited and Others v. Arti Devi Dangi and Another** (2016) 15 SCC 480) wherein it was stated that IRC guidelines are statutory in nature provided, the States have adopted it, those become mandatory.

3. Today when the matter was taken up, the learned counsel for the 6th respondent and the learned Standing Counsel for the 2nd respondent stoutly opposed the continuation of the interim order and requested to vacate the same. Hence the matter was heard through video conferencing for the purpose of considering whether the interim order should be continued or not.

4. The learned Government Pleader submits that by an order dated 10.2.2020 the State Government had incorporated the IRC norms into the PWD manual and the said order has not yet been challenged. However, the learned counsel for the 6th respondent referred to a Division Bench judgment dated 5.3.2020 in W.A. No.27 of 2020 wherein it is pointed out that the said order of the Government were all taken into reckoning and it was

observed that "the petitioners/appellants (in that case) who had obtained a no objection certificate from the competent authority shall continue the benefits of the interim order."

5. On the basis of the aforesaid submission, I heard the learned counsel for the petitioner, the learned Government Pleader, the learned Standing Counsel for the 2nd respondent and the learned counsel for the 6th respondent.

6. After hearing the matter for sometime, I am satisfied that the interim order shall not continue since great prejudice will be caused to the 6th respondent. Prima facie, I am satisfied that the IRC guidelines will not be applicable on account of the observations made by the Division Bench in W.A. No.27 of 2020 wherein it is stated that the IRC itself has withdrawn the "Guidelines for Access, Location and Layout of Roadside Fuel Stations and Service Stations along with National Highways.

7. Faced with such a situation, the learned counsel for the petitioner submitted that what is withdrawn by the IRC are guidelines related to National Highways only. However,

controverting the said submission, the learned Standing Counsel for the 2nd respondent submits that the IRC had issued guidelines only for the National Highways and not for any rural areas.

8. Taking note of the aforesaid submissions, I am satisfied that the 6th respondent has made out a case to vacate the interim order. Hence I vacate the interim order granted by this Court on 28.4.2020 and direct the respective parties to file their counter affidavits.

Post the writ petition on 28.5.2020 for further consideration.

**BECHU KURIAN THOMAS
JUDGE**

vps

APPENDIX

EXT.1: TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY 5TH
RESPONDENT DT.27.11.19.

EXT.2: TRUE COPY OF THE GOVERNMENT ORDER NUMBER 46/2019/PWD
DT.22.10.19