

W.P.Nos.4321 of 2020 and 2951 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MRS.JUSTICE N.MALA

W.P.Nos.4321 of 2020 and 2951 of 2022

W.P.No.4321 of 2020:

St. Mary's Matriculation Higher Secondary School,
rep. by its Principal,
Bypass Road,
Sriperumbudur-602 105
Kanchipuram District.

.. Petitioner

Vs

1.The Secretary,
Ministry of Petroleum,
A-Wing, Shastri Rajendra Prasad Road,
IP Estate, New Delhi-110 002.

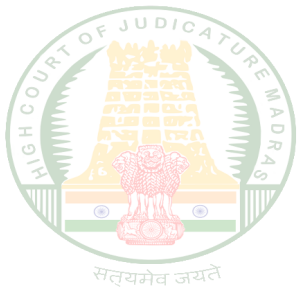
2.The Regional Officer,
HPCL, Chennai Retail RO,
Petro Bhavan-2nd Floor,
New No.82, Old No.47, TTK Road,
Alwarpet, Chennai-600 018.



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- 3.The Deputy General Manager-Retail,
Hindustan Petroleum Corporation Limited,
New No.82, Old No.47, TTK Road,
Alwarpet, Chennai-600 018.
 - 4.The District Collector/District Magistrate,
Office of the District Collector,
Kancheepuram District.
 - 5.The Executive Officer,
Office of the Executive Officer,
Sriperumbudur Town Panchayat (Special Grade),
Sriperumbudur,
Kancheepuram District.
 - 6.The District Revenue Officer and
Additional District Magistrate,
Kancheepuram, Kancheepuram District.
 - 7.V.B.R.Menon
 - 8.The Deputy General Manager (Tech) and
Project Director PIU Krishnagiri
National Highways Authority of India,
259/1, Salem Main Road,
Near KaKC Petrol Bunk,
Krishnagiri-635 001.
 - 9.The Chief Engineer and Regional Officer,
Ministry of Road Transport and Highways,
C-1-A, Rajaji Bhavan, Besant Nagar,
Chennai-600 090.
 - 10.The Joint Chief Controller of Explosives,
A and D Wing, 26, Haddows Road,
Nungambakkam, Chennai - 600 006.
- Respondents ..



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(Respondent No.6 impleaded vide order dated 06.07.2020 in WMP.Nos.10859 & 10861 of 2020)

(Respondent No.7 impleaded vide order dated 15.07.2020 in WMP.No.11073 of 2020)

(Respondent Nos.8 to 10 impleaded vide order dated 27.07.2020 in WMP.No.11436 of 2020)

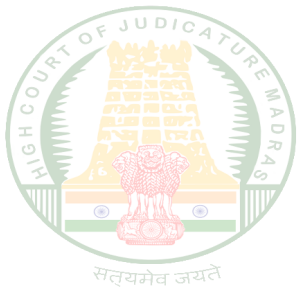
W.P.No.2951 of 2022:

St. Mary's Matriculation Higher Secondary School,
rep. by its Principal,
By pass Road,
Sriperumbudur-602 105
Kanchipuram District.

.. Petitioner

Vs

- 1.The Secretary,
Ministry of Petroleum & Natural Gas,
A-Wing, Shastri Bhawan,
Rajendra Prasad Road,
New Delhi-110 001.
- 2.The Joint Chief Controller of Explosives,
South Circle, Chennai,
A&D Wing, Block 1-8,
2nd Floor, Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai - 600 006.
- 3.The Deputy General Manager - Retail,
Hindustan Petroleum Corporation Limited,
Petro Bhavan, 2nd Floor,
New No.82, Old No.47, TTK Road,
Alwarpet, Chennai - 600 018.



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4.The District Collector,
Kancheepuram District,
Collector Office Complex,
Kancheepuram-631 501.

5.The District Revenue Officer and
Additional District Magistrate,
Kancheepuram District,
Collector Office Complex,
Kancheepuram - 631 501.

6.The Executive Officer,
Office of the Executive Officer,
Sriperumbudur Town Panchayat (Special Grade),
No.7, Car Street, Nenmeli,
Sriperumbudur-602 105.

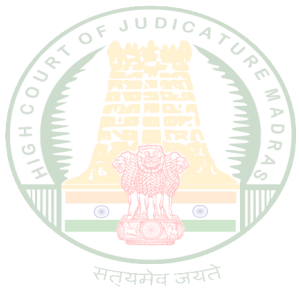
7.The Controller of Legal Metrology,
(Weight & Measures)
Government of Tamilnadu,
No.249, DSM Compound, Teyampet,
Chennai - 600 018.

8.The Deputy General Manager (Tech) & Project Director,
PIU-Krishnagiri,
National Highways Authority of India,
259/1, Salem Main Road,
Near KaKC Petrol Bunk,
Krishnagiri-635 001.

9.V.B.R.Menon

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

.. Respondents



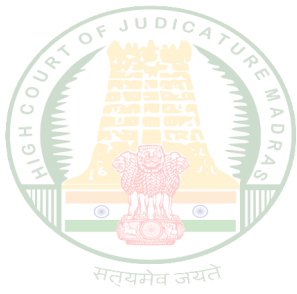
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(Respondent Nos.1, 7 to 10 are given-up and
Respondent Nos.2 to 6 are retained as per the
order dated 01.03.2022 in WMP.No.4558 of 2022)

Prayer : W.P.No.4321 of 2020 filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records pertaining to NOC dated 12.09.2019 in No.D.Dis.11529/2019/M3 on the file of the 4th and 6th respondents, issued in favour of the 3rd respondent to open and operate a New Road Side Retail Outlet of HPCL, adjacent to the petitioner St. Mary's Hr. Sec. School, Sriperumbudur, in Survey No.786/2A, Sriperumbudur Village, Sriperumbudur Taluk, Kanchipuram District and several public/residential buildings and quash the same. [Prayer amended as per the order dated 06.07.2020 made in WMP.No.10861 of 2020]

W.P.No.2951 of 2022 filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to call for the records of the Final Explosives License No.P/SC/TN/14/8699 (P431356) dated 03.03.2020 and the consequential Amended Site Layout Drawing dated 02.09.2020 on the file of the 2nd respondent and quash the same and consequently restraining the 3rd respondent from commissioning and operating the proposed Road-side Petroleum Retail Outlet on NH-48 at Survey No.786/2A1, Sriperumbudur Taluk, Sriperumbudur Village, Kancheepuram District.



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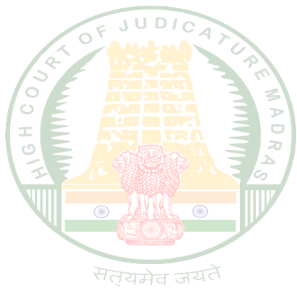
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For the Petitioner
in both WPs

: Mr.Father Xavier Arulraj
Senior Counsel
for M/s.Father Xavier Associates

For the Respondents

- : Mr.S.Diwakar, CGSPC
for respondent Nos.1 and 2
in W.P.No.4321 of 2020
- : Mr.P.S.Raman, Senior Counsel
for Mr.Sanjay Pinto
for respondent No.3
in both WPs
- : Mr.P.Muthukumar
State Government Pleader
assisted by
Mrs.E.Renganayaki
Addl. Government Pleader
for respondent Nos.4 to 6
in both WPs
- : Mr.Vijay Narayan
Senior Counsel
for Mr.V.B.R.Menon
Respondent No.7
in W.P.No.4321 of 2020
- : Mr.Su.Srinivasan
for respondent No.8
in W.P.No.4321 of 2020
- : Mr.Rabu Manohar
for respondent Nos.9 and 10
in W.P.No.4321 of 2020
and respondent No.2



W.P.Nos.4321 of 2020 and 2951 of 2022

in W.P.No.2951 of 2022

COMMON ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

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W.P.No.4321 of 2020 has been filed by the petitioner school to challenge the No-objection Certificate dated 12.9.2019 granted by respondents 4 and 6 in favour of the third respondent, alleging it to be in violation of the relevant Rules and instructions.

2. The second public interest litigation, being W.P.No.2951 of 2022, has been filed by the petitioner school to challenge the final explosive licence dated 3.3.2020 and consequential amended site layout drawing dated 2.9.2020, and to consequently restrain the third respondent from commissioning and operating the proposed Road-side Petroleum Retail Outlet on NH-48 at Survey No.786/2A1, Sriperumbudur Taluk, Sriperumbudur Village, Kancheepuram District.

3. Learned Senior Counsel for the petitioner submits that the



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petitioner school is established and administered by Roman Catholic Missionaries and these writ petitions have been filed in public interest to challenge the no-objection certificate, the final explosive licence so as the amended site layout drawing which have been issued in ignorance of the various provisions of law and the instructions. It is submitted that the establishment of petroleum retail outlet would otherwise affect the operation of the school and the lives of the children would be put in danger, for the reason that the licence as well as the site plan have been approved in ignorance of the fact that adjoining the wall of the school, the retail outlet would be established.

4. Learned Senior Counsel for the petitioner submits that the no-objection certificate dated 12.9.2019 has been issued by respondents 4 and 6 in ignorance of the fact that the provisional approval granted by the NHAI on 27.3.2018 was only for a period of one year and the period aforesaid expired on 26.3.2019, yet no-objection certificate dated 12.9.2019 was given to open retail outlet. On this ground itself, the no-objection certificate deserves to be set

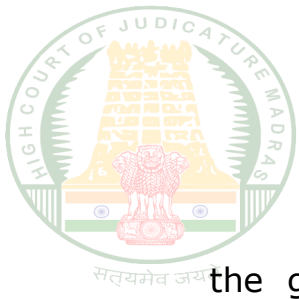


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5. The next ground taken by learned Senior Counsel for the petitioner is in reference to the nature of the land. He submits that the land in question is an agricultural land/wet land and, thus, cannot be used for commercial purpose without its conversion. The petitioner has produced the Collector's report dated 26.11.2021 to indicate that the land on which retail outlet is to be established has not been converted. Thus, the no-objection certificate to establish the retail outlet has been granted in violation of Section 47-A of the Tamil Nadu Town and Country Planning Act, 1971 [for brevity, "*the Act of 1971*"]. The wet land cannot be used for commercial purpose, but ignoring the aforesaid and even the revenue record, the no-objection certificate has been granted by the District Revenue Officer. Thus, on the aforesaid ground also the no-objection certificate under challenge deserves to be set aside.

6. The other ground for challenge to the no-objection certificate issued by the District Revenue Officer is in reference to

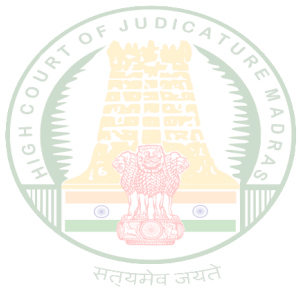


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the guidelines of MORTH, wherein certain conditions have been imposed for grant of permission/no-objection certificate. In the instant case, the land on which retail outlet would be established is just adjacent to the school, rather they are sharing a common wall. Thus, the norms laid down by the MORTH dated 24.7.2013 have also been violated, which does not permit retail outlet adjoining the school. The no-objection certificate could not have been granted even for the reason as it would be within 100 metres from the intersection of road and, therefore, the DRO has even ignored the guidelines of the MORTH for grant of no-objection certificate in question.

7. Learned Senior Counsel for the petitioner has further made a reference of Rule 144 of the Petroleum Rules, 2002 [for brevity, "*the Rules of 2002*"] said to have not been followed. It is contended that the no-objection certificate has been granted on the proforma without any discussion on each issue to show the application of mind and thereby even Rule 144 of the Rules of 2002 have been violated.

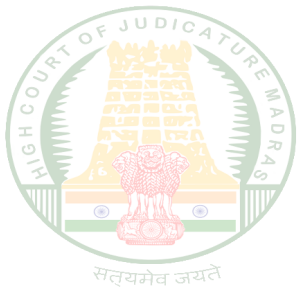


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8. In support of the above arguments, reference of the judgment of the Madurai Bench of this court in the case of ***K.N.Shanmugam v. The Commissioner of Police and others [Order dated 5.8.2019 in W.P. (MD) No.5690 of 2019]*** has been given, wherein it was held that though no objection certificate is on the proforma, no discussion or finding has been recorded to ascertain that the requirement therein was satisfied and, therefore, it is in violation of Rule 144 of the Rules of 2002.

9. Similarly, the judgment of the Madurai Bench of this court in ***Karthick Santhanam and others v. The Commissioner of Police and others [Order dated 30.9.2019 in W.P.(MD) Nos.19244 and 19830 of 2019]*** has been referred to strengthen the argument. Therein also, the compliance of Rule 144 of the Rules of 2002 was not found. Thus, on the strength of the aforesaid judgment also, challenge to the no-objection certificate granted by the District Revenue Officer has been made.



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10. The further ground to challenge the no-objection certificate is in reference to the Code of Regulations for Play Schools, 2015 [for brevity, "*the Regulations of 2015*"] Referring to Regulation 11(j) of the said Regulations, it is urged that safety measures required to be followed by the play school have not been considered while granting no-objection certificate and thereby the Regulations of 2015 have been violated. It is more so when the school was opened much prior to the no-objection certificate and, thus, for grant of no-objection certificate, the respondents were under an obligation to ensure that the Regulations of 2015 are not violated.

11. Learned Senior Counsel for the petitioner has further referred to the Office Memorandum dated 7.1.2020 issued by the Central Pollution Control Board to indicate that a new retail outlet shall not be located within a radial distance of 50 metres from the schools, hospitals and residential areas designated as per the local laws. In case of constraints in providing 50 metres distance, the retail outlet shall implement additional safety measures as

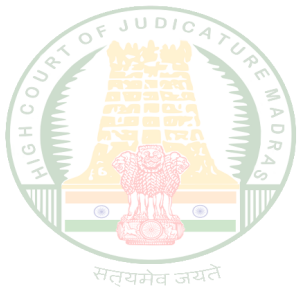


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prescribed by PESO. The aforesaid office memorandum dated 7.1.2020 has also been violated and, therefore, the explosives licence so as the site approval and the no-objection certificate to establish the retail outlet deserve to be set aside.

12. Learned Senior Counsel for the petitioner has even made a reference to the google map to show that the school and the retail outlet would be sharing the common wall and, therefore, the distance of 50 metres given in the office memorandum dated 7.1.2020 would not be maintained. The map has been produced to show other distances also. Accordingly, a prayer is made to allow the writ petitions and set aside the explosives licence, site approval plan and the no-objection certificate.

13. The prayer in the writ petitions has been vehemently contested by learned Senior Counsel appearing for the Hindustan Petroleum Corporation Limited, the third respondent, apart from other respondents.



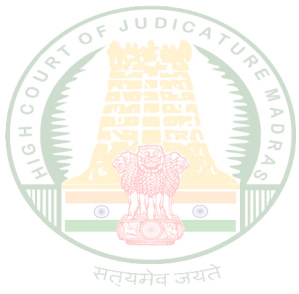
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14. It is submitted that there is no violation of any of the Rules or Regulations or guidelines applicable for grant of explosive licence, approval of site plan and even the no-objection certificate. The compliance of the Rules and guidelines has been made before grant of no-objection certificate by the DRO.

15. Coming to the facts of the case, learned Senior Counsel for the third respondent submitted that the land on which retail outlet would be established is not on the National Highways, but on the service lane and the no-objection certificate has been granted only after the permission to use the wet land (agricultural land) as per the provisions of law was obtained.

16. In view of the above, the facts narrated by learned Senior Counsel for the petitioner have been disputed and elaborate arguments on all the issues have been made. The arguments raised by learned counsel for the respondents would be referred while dealing with each issue, in order to avoid repetition.



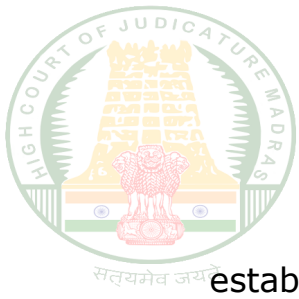
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17. The court, accordingly, perused the records to analyse the issues raised by learned Senior Counsel for the petitioner for challenge to the explosives licence, site plan approval and the no-objection certificate granted by the District Revenue Officer.

18. The first ground to challenge the no-objection certificate is in reference to the approval granted by the NHAI on 27.3.2018. The approval was granted for a period of one year and expired on 26.3.2019 and, thus, according to the petitioner, the subsequent no-objection certificate given by the District Revenue Officer on 21.09.2019 becomes illegal.

19. To analyse the argument aforesaid, we have gone through the approval order dated 27.3.2018 given by the NHAI and find that the aforesaid was not for establishment of retail outlet, but to seek permission to construct culvert and approach road for access to the retail outlet from the Highways through the service road. The said construction was to be completed within one year. Thus, the approval aforesaid has wrongly been construed to be for



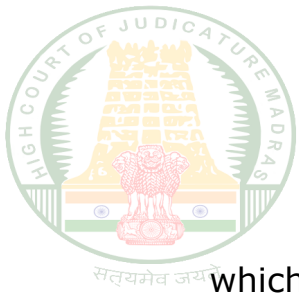
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establishment of a retail outlet.

20. In view of the above, the first ground raised by learned Senior Counsel for the petitioner cannot be accepted because reference of the approval dated 27.3.2018 to claim that the same expired on 26.3.2019 is out of reference to the issue on hand. It was not one of the issues to be addressed by the District Revenue Officer, because the land in question, which was offered for establishment of the retail outlet, has access from a service lane parallel to the highways and thus to construct culvert and approach road for access to the retail outlet through the service lane, the approval aforesaid was given.

21. The second ground to challenge the no-objection certificate is referring to the nature of the land. It was stated that it is wet land and, therefore, without conversion of usage for commercial purpose, the no-objection certificate could not have been given by the District Revenue Officer. A reference of the Act of 1971 has been given, especially Section 47-A of the Act of 1971,



which is quoted hereunder:

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"47-A. Development of land in an area other than planning area.-

(1) Any person intending to carry out any development on any land in an area other than planning area shall make an application in writing to the local authority for permission in such form and containing such particulars and accompany such documents as may be prescribed.

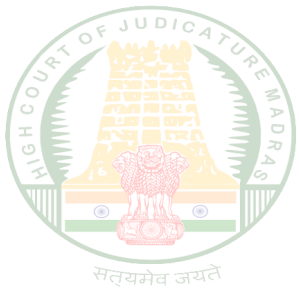
(2) The local authority shall before according permission under subsection (1), shall obtain the prior concurrence of the Director and shall also collect such fees at such rate as may be prescribed: Provided that in the case of wet lands, the prior concurrence of the Collector of the District concerned is necessary.

(3) The Collector shall give his prior concurrence to the local authority under sub-section (2), upon fulfillment of such guidelines as may be prescribed.

(4) Where any development of land has been carried out,-

(a) without permission required under this section; or

(b) in contravention of any permission



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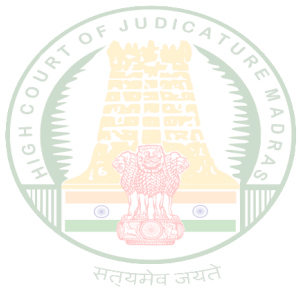
granted or of any condition subject to which permission has been granted; or

(c) after the permission for development of land has been duly revoked; or

(d) in contravention of any permission which has been duly modified. the local authority shall exercise the powers of the appropriate planning authority under sections 56 and 57 with such modifications as may be necessary.

Explanation.- The term "wet land" in this section shall have the same meaning as in the Tamil Nadu Additional Assessment and Additional Water Cess Act, 1963 (Tamil Nadu Act 8 of 1963)"

22. The provisions of Section 47-A of the Act of 1971 apply to an area other than the planning area. The requirement is to make an application in writing to the local authority for permission in such form, containing such particulars as may be prescribed. The local authority is then to grant permission under sub-section (1) to Section 47-A of the Act of 1971 after obtaining prior concurrence of the Director.

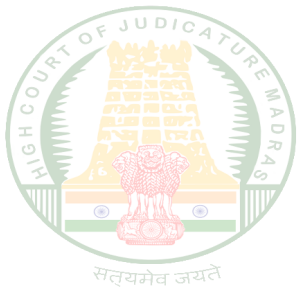


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23. Learned Senior Counsel for the third respondent has referred to a document to indicate the order under the Act of 1971. and that the provisions of the Act of 1971 has been complied. The permission was to use the wet land as residential plots and for multiple alternative purposes, as could be borne out by a reference to paragraph (18) of the no-objective certificate dated 19.7.2018 issued by the District Collector, Kancheepuram. In view of the above, we do not find that there is a violation of Section 47-A of the Act of 1971. Thus, even the second ground for challenge to the impugned orders is not made out, which is otherwise by the petitioner running the school on the wet land without permission under Section 47A of the Act of 1971.

24. The third ground for challenge to the orders is in reference to the guidelines of MORTH dated 24.7.2013. According to learned Senior Counsel for the petitioner, the retail outlet cannot be established at a distance less than 100 metres from intersection with other roads and otherwise 1000 metres from the intersection with NHs/SHs/MDRs.



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25. The argument of learned Senior Counsel appearing for the third respondent is about the application of the said guidelines of MORTH. It is submitted that the retail outlet would not be on the national highways, but on the service lane and thereby the guidelines of the MORTH are not applicable. The statement aforesaid has been supported by learned counsel appearing for the NHAI. It is stated by him that the guidelines of MORTH would not be applicable if the retail outlet is brought on the service lane, but would apply only when it is established on the national highways.

26. In view of the above, even the third argument to challenge the no-objection certificate issued by the District Revenue Officer cannot be accepted, because the guidelines of MORTH are not applicable for the retail outlet to be established on the service lane. It is otherwise applicable only for the establishment of a retail outlet on the national highways.

27. The fourth ground raised by learned Senior Counsel for the



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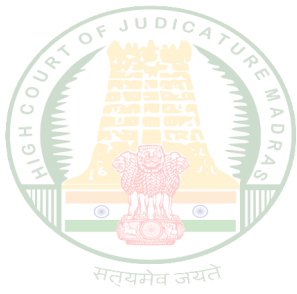
petitioner is in reference to Rule 144 of the Rules of 2002. For appreciation of the argument, it would be gainful to quote the said provision hereunder:

"144. No-objection certificate. –

(1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new licence other than a licence in Forms III, XI, XVII, XVIII, or XIX shall apply to the District Authority with two copies of the site-plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection, to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate in the proforma specified in sub-rule (7), to the applicant who shall forward it to the licensing authority with his application Form IX.

Note. - The licensing authority shall accept the no objection certificate within a period of three years from the date of its issue for considering grant of licence.

(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of



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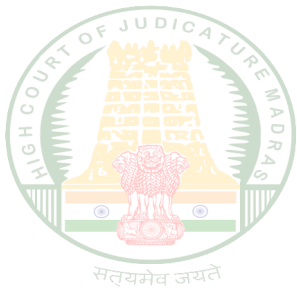
the plan of the proposed site duly endorsed by him under his official seal.

(3) The Chief Controller or the Controller as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations.

(4) If the District Authority, either on a reference being made to him or otherwise, intimates to the Chief Controller or the Controller as the case may be, that any licence which has been applied for should not, in his opinion, be granted, such licence shall not be issued without the sanction of the Central Government.

(5) The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him.

(6) Where the location of storage of petroleum is



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within the notified area of a Port or Airport under the control of the state, or establishment of Indian Space Research Organisation or Department of Atomic Energy, NO OBJECTION CERTIFICATE from the District Authority referred to in sub-rules (1) to (5) shall not be required:

Provided that consent for establishment of petroleum storage from the competent authority of concerned notified area or head of the establishment, as the case may be, is obtained.

(7) The district authority shall issue a no objection certificate in the following proforma, namely:-

PROFORMA

NO OBJECTION CERTIFICATE

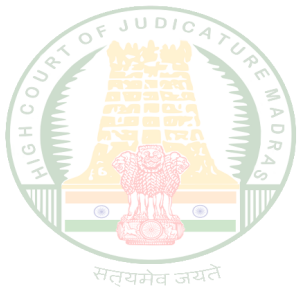
[See rule 144]

No.....

Date.....

Subject: No objection certificate

With reference to the application No.....datedsubmitted by.....and in pursuance of rule 144 of the Petroleum Rules, 2002, there is no objection for granting licence under the Petroleum Rules, 2002 to Shri/Smt./M/s. address..... for storage of petroleum



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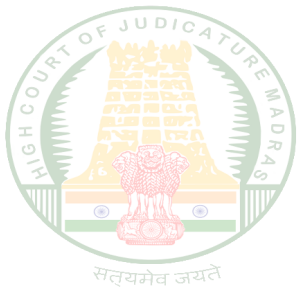


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*products in their premises at Survey
No...../Gat No...../ Khasra No.
Plot No....., Village Taluka/
Tehsil.....District.....
State.....as shown in the site plan
duly endorsed and enclosed herewith.*

*(1) The following particulars have been considered
while issuing this no objection certificate, that-*

- (a) possession of the site by the applicant is
lawful and authorisation from land owner or
lease holder for developing premises under
these rules for storage of petroleum
products;*
- (b) interest of public, specially the facilities
like schools, hospitals or proximity to places
of public assembly and the mitigating
measures, if any, is provided;*
- (c) traffic density and impact on traffic;*
- (d) conformity of proposal to the local or
area development planning;*
- (e) accessibility of the site to fire tenders in
case of emergency and preparedness of fire
services for combating the emergencies;*
- (f) genuineness of purpose.*



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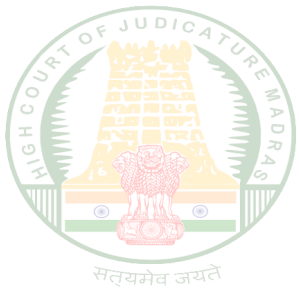
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(g) any other matter pertinent to public safety;

Signature of the district authority issuing no objection certificate with his office seal (in towns having a Commissioner of Police, the Commissioner or a Deputy Commissioner of Police and for any other place the District Magistrate)

Note. - The licensing authority shall accept the no objection certificate within a period of three years from the date of its issue for considering grant of licence."

28. The Rule aforesaid was amended with effect from 10.8.2018 by inserting sub-section (7) to Rule 144 of the Rules of 2002. The proforma for issuance of no-objection certificate was brought therein, which deals with all the relevant issues to be looked into by the competent authority before granting the no-objection certificate. The allegation of the petitioner is that without dealing with each issue relevant for grant of no-objection certification, it has been issued and, thus, deserves to be set aside.

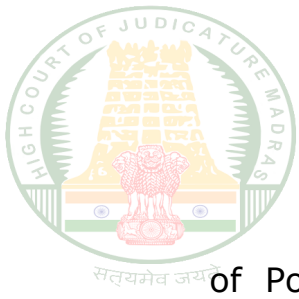


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29. To support the argument a reference of the judgment of this court in the case of **K.N.Shanmugam**, supra, has been given, wherein it was held that the no-objection certificate does not show discussion or finding as to how it was ascertained that all the requirements have been satisfied. A further reference of the subsequent judgment in the case of **Karthick Santhanam and others**, supra, has also been given.

30. To analyse the issue aforesaid, we have gone through the no-objection certificate on record and otherwise referred by learned counsel for the respondents to indicate that it has been given on the proforma attached to Rule 144 of the Rules of 2002 and, thus, should not be nullified on the ground raised by the petitioner. The note appended to the no-objection certificate shows that it was granted only after taking into consideration the recommendations from all officers concerned, which includes the office of Sub Collector, Kancheepuram; the Tahsildar, Sriperumbudur; The District Officer Fire and Rescue Services, Kancheepuram; the Deputy Director of Health Service, Kancheepuram; and, the Superintendent

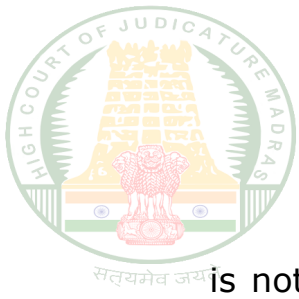


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of Police, Kancheepuram. The recommendations were called to address all the issues required to be considered for grant of no-objection certificate. A detailed discussion in that regard and correspondence in support thereof is not to be described in the no-objection certificate, rather it remains on the file of the competent authority. The two judgments cited by the petitioner would not apply to the facts of this case, inasmuch as no-objection certificate challenged by the petitioner herein was given after obtaining the recommendation of all concerned on different issues. Thus, it cannot be said to be a case of violation of Rule 144 of the Rules of 2002.

31. It is further to be clarified that when no-objection certificate has been issued in the proforma given under the Rules of 2002 itself, then it cannot be nullified on the ground that there exists no discussion on the issue for grant of no-objection certificate, when it is not mandated in the Rules of 2002. The proforma is now part of the Rules and if no-objection certificate has been issued based on it, the statutory requirement gets satisfied. It



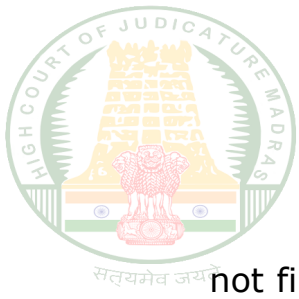
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is not alleged that any of the issue given therein has wrongly been dealt with. We are, therefore, in agreement with the argument raised by learned Senior Counsel for the third respondent.

32. The next ground taken by learned Senior Counsel for the petitioner is in reference to the Regulations of 2015. A reference of Regulation 11(j) of the Regulations of 2015 has been given to indicate that the said regulation has been violated by the respondents.

33. To appreciate the argument aforesaid, we have gone through the Regulation 11(j) of the Regulations of 2015 and find that it is applicable for opening of play school and, thus, is to be complied by the school concerned and may not apply for opening of the retail outlet. It is more so when establishment of retail outlet is governed by a separate set of rules, i.e., the Rules of 2002. A special legislation to seek approval for opening of a play school cannot be applied against another special legislation for establishing a retail outlet in view of the Rules of 2002 and, accordingly, we do

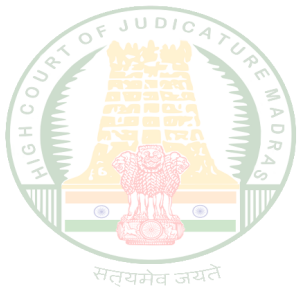


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not find Regulation 11(j) of the Regulations of 2015 to be applicable to the case on hand, when it is applicable only for opening of the play school and stipulates that the school cannot be located near the petrol bunk which is less than 100 metres. The special legislation operates in its own field and cannot have application to a matter which is not covered by it and rather for that a separate legislation exists. Thus, the challenge to the no-objection certificate in reference to Regulation 11(j) of the Regulations of 2015 cannot be accepted for the reasons given above. The Regulations aforesaid is to be complied if anyone wants to open a play school and it is not applicable for opening a retail outlet. It is also that petitioner has not produced documents showing their school to be a play school.

34. Learned Senior Counsel for the petitioner has further given reference to the Office Memorandum dated 7.1.2020 issued by the Central Pollution Control Board. It is to indicate that the new retail outlet should not be located within a radial distance of 50 metres from fill point/dispensing units/vent pipe, from the schools, hospitals and residential areas designated as per the local laws.



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35. The argument of learned Senior Counsel appearing for the third respondent is again on the applicability of the aforesaid office memorandum dated 7.1.2020, inasmuch as the no-objection certificate was issued on 12.9.2019, much prior to the issuance of the aforesaid office memorandum. The office memorandum of the Central Pollution Control Board cannot be applied retrospectively.

36. We find substance in the argument of learned Senior Counsel for the third respondent on the issue aforesaid, because the no-objection certificate was issued prior to the issuance of the office memorandum and the office memorandum is not to operate retrospectively. Thus, we are unable to accept the argument of learned Senior Counsel for the petitioner in reference to the office memorandum dated 7.1.2020 to cause interference with the no-objection certificate issued by the District Revenue Officer.

37. At this stage, we would make a reference of the google map placed by learned Senior Counsel for the petitioner on record to show the distance of the retail outlet from the school. The distance

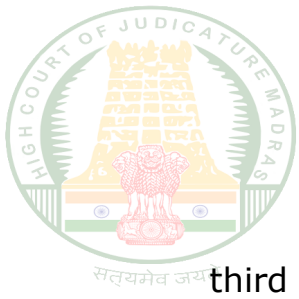


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therein has been marked, but being a factual issue we cannot enter into it. In any event, the aforesaid would not be of any relevance in the light of the discussion made in reference to the guidelines of the MORTH as well as the office memorandum of the Central Pollution Control Board, apart from the Regulations of 2015; the Rules of 2002 and the Act of 1971. They are not applicable to the case in hand.

38. However, the google map aforesaid has been taken for our assistance to give suitable directions as under, though we are not inclined to interfere with the no-objection certificate; the explosive licence; and, the amended approval of the layout plan. The third respondent is directed to ensure that while establishing and even operating the retail outlet, they shall observe all safety measures and, at the same time, regulate the traffic to have access to the retail outlet, so that it may not cause any inconvenience to anyone. All measures should be taken to ensure that the traffic shall not affect the entry and exit of the students to and from the school. The



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third respondent should make adequate security arrangements to take care of the aforesaid, while operating the retail outlet.

39. In the result, the writ petitions are disposed of with the directions given above. There will be no order as to costs. Consequently, W.M.P.Nos.5118, 9917, 11100 of 2020; 27573 of 2021; 1894, 3102 and 3103 of 2022 are closed.

(M.N.B., CJ.) (N.M., J.)
21.06.2022

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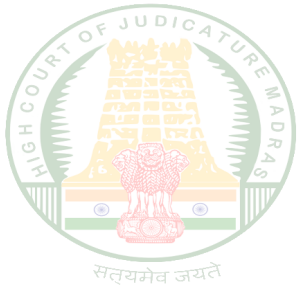
- 1.The Secretary,
Ministry of Petroleum,
A-Wing, Shastri Rajendra Prasad Road,
IP Estate, New Delhi-110 002.
- 2.The Regional Officer,
HPCL, Chennai Retail RO, Petro Bhavan-2nd Floor,
New No.82, Old No.47, TTK Road,
Alwarpet, Chennai-600 018.
- 3.The District Collector/District Magistrate,
Office of the District Collector,
Kancheepuram District.



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- 4.The Executive Officer,
Office of the Executive Officer,
Sriperumbudur Town Panchayat (Special Grade),
Sriperumbudur, Kancheepuram District.
- 5.The District Revenue Officer and Additional District Magistrate,
Kancheepuram, Kancheepuram District.
- 6.The Deputy General Manager (Tech) and
Project Director PIU Krishnagiri
National Highways Authority of India,
259/1, Salem Main Road,
Near KaKC Petrol Bunk, Krishnagiri-635 001.
- 7.The Chief Engineer and Regional Officer,
Ministry of Road Transport and Highways,
C-1-A, Rajaji Bhavan, Besant Nagar,
Chennai-600 090.
- 8.The Joint Chief Controller of Explosives,
A and D Wing, 26, Haddows Road,
Nungambakkam, Chennai - 600 006.



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THE HON'BLE CHIEF JUSTICE
AND
N.MALA,J.

(sasi)

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21.06.2022