

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

ORIGINAL APPLICATION NO. 118 of 2021 (SZ)

IN THE MATTER OF

D. Sakthivel,
Periyasemur, Erode District - 638 004

... Applicant

and

1. The District Collector
Erode District,
Erode - 638 001 and 7 others

... Respondents.

INDEX

Sl. No	Description of Document	Page No.
1	Written Submissions filed by the Counsel for the Applicant	1 - 5

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WRITTEN SUBMISSIONS FILED BY THE COUNSEL FOR APPLICANT

The above titled application has been filed under Section 18(1) read with Section 14 (i) of the National Green Tribunal Act, 2010 seeking to :

A. permanently injunct the 6th Respondent from operating the New Road-side Petroleum Retail Outlet on Sathy-Erode Main Road in Survey No. 27/2, Periyasemur Village, Erode District - 638 004 , in gross 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/10802-10847 dated 07.01.2020 , in close proximity to a waterbody and in violation to the mandatory norms prescribed in Circular No. 12-2009 by the Indian Road Congress.

and

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

I. VIOLATION OF DISTANCE NORMS FROM A SCHOOL :

1. The above Petroleum Retail Outlet is situated just opposite to Erode Hindu Kalvi Nilayam Matriculation Higher Secondary School , which includes a Play school where students from Pre- KG onwards are studying . Hence, operation of the Petroleum outlet at the above site shall not only be violative of the CPCB Circular dated 07.01.2021 but shall also be violative of Rule 11(j) of the Tamilnadu G.O. No. 256 of 2015 dated 22.12.2015 wherein a mandatory safe distance of 100 M. has been prescribed between Petroleum Retail Outlets and Play Schools.

2. The Hon'ble First Bench of the Madras High Court has held that the above Rule 11(j) of G.O.No. 256 of 2015 shall be applicable, in addition to the CPCB Siting criteria, in respect of all types of schools where students within the age group 2.5 to 5.5 years (Play school classes) are studying (**Ref; Para No.3 of the Judgement dated 02.03.2021 in WP No. 19255 of 2020 and para nos. 3 to 5 of the order dated 22.09.2021 in WP No. 4321 of 2020**).

3. The Hon'ble First Bench of the Madras High Court had also earlier directed the state government to extend the above distance norm in respect all other types of schools also by taking note of the health hazards associated with operation of petroleum outlets on young children and the observations of another Division bench of Bombay High Court reported in 2009 4 MhLJ 255 . (**Ref ; Order dated 05.09.2017 in WP No. 23546 of 2017**).

4. It is relevant to mention that the above cited Division Bench Judgement of Bombay High Court has held that the prohibited distance between schools and Petroleum outlets shall be measured by taking the aerial distance between the nearest gate of the School and the Petroleum outlet . The Joint Committee has ignored this judicial decision while reporting the distance between the above Petroleum Outlet and the School as 36 M.

5. Even the distance of 36 M , which the Joint Committee has reported in it's report, is less than the prohibited distance of 50 M as per the Siting Criteria prescribed by CPCB in the Circular dated 07.01.2020. It is also an admitted fact that no additional safety measures have been prescribed by PESO , the 3rd Respondent , while granting the site approval vide the Order dated 20.01.2021 . Hence, the question of relaxation of prohibited distance to 30 M does not arise in the present case at all , as it is not for the 6th Respondent to decide the list of additional safety measures to be provided for claiming the above relaxation as per the CPCB Siting criteria.

6. The 6th Respondent has fraudulently omitted / suppressed to show the actual distance between the School and the Petroleum Outlet in the site topo plan submitted for approval under Rule 131.1 (iii) and 144(1) of the Petroleum Rules, 2002 and the 3rd Respondent appears to have approved the same and issued prior site approval and final explosives licence to the 6th Respondent to operate the outlet without conducting any site inspection and verification of relevant particulars.



7. The proposed site for the Petrol pump shall be holding highly inflammable, explosive and dangerous Petroleum products under Explosive License which shall pose serious danger to the health, life and safety of the large number of small children studying in the School and people residing in the surrounding areas which shall violate their right to life guaranteed under Art.21 of the Constitution of India . The Applicant has submitted several published articles including a judgement of the Principal bench in the typed set in the OA.

II. VIOLATION OF DISTANCE NORMS IN RESPECT OF WATER BODIES:

8. The above site is situated adjacent to a Water body (Odai) , which is a part of the same survey number 27 in which the above Petroleum outlet has been set up . It shall be, hence, in violation to the norms prescribed by CPCB pursuant to the Order passed by the Hon'ble NGT(CZ) Bench on 23.07.2020 in OA No.61/2019 (CZ). Copies of the revenue records ie. A-Register extract, FM Sketch, etc. , submitted by the Applicant , shall conclusively prove the above fact beyond any doubt. **The 6th Respondent has also mischievously omitted to show the above water body in the site drawing approved by the 3rd Respondent.**

9. It shall be a mystery to understand how the Joint Committee came to the conclusion that the above water body is only a drainage channel without verifying the revenue records and the fact that it runs through several villages before joining the river. The law regarding the duty of the State to protect water bodies under public trust doctrine is well settled after the decision of the Full bench of the Hon'ble High Court , reported in 2015-5-LW-397. The failure to protect the original extent and width of the above water body by the state authorities shall not alter the nature of classification of the same as an Odai(Water stream).

10. The Joint Committee is also silent in it's report about the violation of CPCB Siting criteria, after recording in the report, about the existence of a residential building adjacent to the Petroleum outlet. It shall be another reason why the Petroleum outlet cannot be permitted to operate at the above site.

III. VIOLATION OF OF G.O.(Ms) 79 of 2017 REGARDING CHANGE OF LAND USE :

11. The Petroleum Outlet has been set up in a Dry agricultural plot without obtaining necessary permission for change of land use from the Director,



DTCP as per G.O.(Ms.) No. 79 of 2017 issued under Sec. 47-A of the Tamilnadu DTCP Act, 1972. Further, no steps to prevent underground water pollution in the surrounding areas have been taken, as per the CPCB Circular dated 07.01.2020, while setting up the above Petroleum outlet.

IV. VIOLATION OF Erode City Municipal Corporation Act, 2008 :

12. The 5th Respondent has submitted in his Counter affidavit that the 6th Respondent has not applied or obtained any permission or approval for site development or construction works at the above site in gross violation to the mandatory provisions of the Erode City Municipal Corporation Act, 2008. He has further submitted that necessary criminal proceedings have been contemplated against the 6th Respondent against the above statutory violations.

V. VIOLATION OF DISTANCE NORMS IN RESPECT OF IRC NORMS:

13. The 2nd Respondent has not obtained No Objection from the Highways Department, 4th Respondent, who is the controlling authority for granting access to Highways under IRC Circular No. 12: 2009 . The Principal Secretary , Highways Department has further issued specific directions to all the District Authorities to comply with IRC norms and obtain NOC from the 4th Respondent and it has not been complied with in the present case.

14. It shall be ridiculous on the part of the 2nd Respondent to rely and act on a communication sent by the Joint Secretary to Government of India to The Principal Secretary to Government of Tamilnadu regarding the difficulties to comply with IRC norms whereas the Principal Secretary to Government of Tamilnadu has already directed the 1st and 2nd Respondents to strictly comply with IRC Circular No.12:2009 while granting NOC for Petroleum Retail Outlets in Tamilnadu.

15. The submissions by the 2nd Respondent that the 3rd Respondent had advised him that none of the above safety measures for the protection of public health and security need to be looked into or complied with while granting the No-Objection Certificate under Rule 144 of the Petroleum Rules, 2002 shall be atrocious, to say the least. It is relevant to note that the mandatory proforma NOC prescribed under Rule 144(7) has clearly listed the

above factors to be considered while issuing the NOC under Rule 144 and the 2nd Respondent cannot take shelter under the above alleged advice received from the 3rd Respondent to openly flout the above statutory provisions and guidelines.

16. It is very important to consider that the 3rd Respondent is conspicuous by his absence in participating in the proceedings before this Hon'ble Tribunal and not filing any response after playing a major role in allowing the 6th Respondent to establish the above Petroleum Outlet in gross violation to almost all the norms, guidelines and statutory provisions. Until and unless the 3rd Respondent is restrained from flouting the above rules , guidelines , etc , the illegalities in establishing petroleum outlets across the state shall continue unabated.

17. The above facts shall undoubtedly prove that the 2nd Respondent has issued the NOC for the Petroleum Retail Outlet purely due to extraneous and obvious reasons and in gross violation to all the norms and procedures prescribed under various status and guidelines . The 2nd Respondent shall be , hence , liable to be proceeded against for insubordination and willful violation of prescribed rules , norms and procedures prescribed for issuing NOC to the Petroleum Retail Outlets in Tamilnadu

18. The averments of the Applicant in the Original Application dated 06.05.2021, Objections dated 06.08.2021 to the Report filed by the Joint Committee, rejoinder dated 06.08.2021 to the Counter affidavit filed by the 1st and 2nd Respondents and the Addl typed sets dated 26.08.2021, 30.09.2021 and 27.10.2021 may be read as part and parcel of this Written Submissions to get a better appreciation of the facts of the case .

It is therefore prayed that this Hon'ble Tribunal may be pleased to allow the above Original Application No. 118 of 2021 (SZ) as prayed for and thus render justice.

Dated at Chennai on this 14th day of November, 2021



V.B.R. Menon
Counsel for Applicant

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D. Sakthivel,
S/o. Devaraj,
No.23, Main Road,
Pavai Thanneerpandal Palayam,
Periyasemur
Erode District - 638 004 ... Applicant

And

The District Collector
Erode District
Collectorate Complex,
State Highway 96
Opp. District Court,
Palayapalayam,
Erode - 638 001 ... Respondents
and 7 others

WRITTEN SUBMISSIONS

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