

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

APPLICATION NO. 118 OF 2021 (SZ)

BETWEEN

D. Sakthivel

... Applicant

And

District Collector and Ors.

... Respondents

Reply by 6th Respondent

Dated at Chennai on this the 12th day of August, 2021.

E-Filing No. :

Date : 12.08.2021



M/s. ABDUL SALEEM

S.SARAVANAN

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

ORIGINAL APPLICATION NO. 118 of 2021 (SZ)

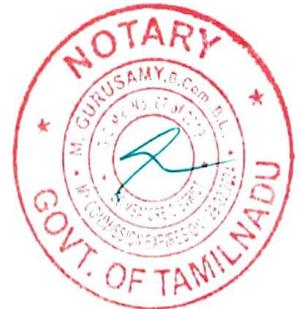
BETWEEN

D. Sakthivel,
S/o. Devaraj,
No.23, Main Road,
PavaiThanneerpandalPalayam,
Periyasemur,
Erode District -638 004

AND

... Applicant

1. The District Collector,
Erode District,
Collectorate Complex,
State Highway 96, Opp. District Court,
Palayapalayam, Erode - 638 001
2. The District Revenue Officer,
Erode District,
Collectorate Complex,
State Highway 96, Opp. District Court,
Palayapalayam, Erode - 638 001.
3. The Joint Chief Controller of Explosives,
A and D Wing,Block1-8
Shastri Bhavan,
No.26, Haddows Road,
Nungambakkam, Chennai -600 006
4. The Divisional Engineer,
Highways Department (C&M)
Erode Division, Bharathi Nagar,
Moolapalayam, Erode - 638 002
5. The Commissioner,
Erode City Municipal Corporation ,
No.894, MeenatchiSundaranar Road,
Erode - 638 001
6. The Territory Manager,
Bharat Petroleum Corporation Ltd.,
Coimbatore Retail Territory Office,
Ravathur Post, Irugur Via
Coimbatore - 641 103
7. The Chairman,
Tamil Nadu Pollution Control Board (TNPCB)
No. 76, Mount Salai, Guindy,
Chennai - 600 032.



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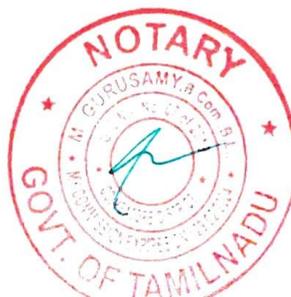
8. The Regional Director,
Regional Directorate (South),
Central Pollution Control Board (CPCB),
2nd Floor, No. 77-A, South Avenue Road,
Ambattur Industrial Estate,
Chennai – 600 058.

... Respondents

REPLY STATEMENT FILED BY THE 6th RESPONDENT

I, K Chandrasekhar, Son of Mr.Venkateswarlu, aged 40 years, having address at BPCL Irugur TOP, Ravathur PO, Irugur Village, Coimbatore, working as Territory Manager Retail, do hereby solemnly affirm and sincerely state as follows:

1. I state that I am the Territory Manager Retail, Coimbatore Retail Territory of Bharat Petroleum Corporation Limited, representing the 6th Respondent herein and as such I am well acquainted with the facts of the case from the records and I am authorized to file this Reply Statement on behalf of the sixth Respondent.
2. I humbly submit that the present application has been filed seeking to 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 of the mandatory norms prescribed in Circular No. 12 – 2009 by the Indian Road Congress.
3. I humbly submit that nothing contained in this Reply Statement 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.



K Chandrasekhar
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4. 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 statement, as if the same were specifically traversed.

5. I humbly submit that the instant Reply Statement is being filed in order to bring out the true and correct factual position and to specifically deal with the averments and allegations made by the Applicant in the instant Application. The answering Respondent reserves liberty to file an additional detailed Statement/Affidavit and additional documents if the situation so necessitates at a later stage.

6. I humbly submit that the above application is not maintainable at all and devoid of merits on both factual and legal aspects. I state that the Applicant has no locus standi to file the above Application as he has approached this Hon'ble Tribunal completely with a vested interest, on the instigation of unknown persons, intending to only cause unwanted agitation as against this Respondent and the same is evident from the fact that the Applicant has cited erroneous provisions and statutes, which are under no circumstance, in violation by this answering respondent and the Applicant is also in full knowledge of the same.

7. I humbly submit that the vested interests of the present applicant is further evident in the very fact that this applicant had chosen to approach this Hon'ble Tribunal, belatedly, one month after the operation and commencement of sales of the subject retail outlet whereas this applicant had ample and sufficient time to file a complaint before the relevant authorities in respect of the alleged violations or to approach this Hon'ble Tribunal as against the establishment of the retail outlet, during the stages of this respondent calling for applications in the year 2018 or during the stages where construction for the said retail outlet had begun.



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8. I humbly submit that such calculative trivial claims made by this Applicant is liable to dealt with by an iron hand, through the imposition of exemplary costs on the applicant for attempting to misuse the powers of this Hon'ble Tribunal. I further state that the applicant has approached this Hon'ble Tribunal with tainted and unclean hands and knowingly suppressed material facts and made misrepresentation and the same is abuse of process of law. Hence, the applicant is not entitled to any relief from this Hon'ble Tribunal.

9. I humbly submit that this respondent had released an advertisement calling for applications for setting up of New Retail Outlets (NROs) on 25.11.2018 in Erode district on SH15, between Erode & Chithode (on Either side) under OBC - Regular DC category. I submit that in response to the advertisement, one Mr Senthil Kumar P was selected as per the selection process and a Letter of Intent (LOI) was issued on 04.01.2020.

10. I humbly submit that the site area offered by LOI holder for setting up the New Retail Outlet was 1342.59 Sq.M., admeasuring 35 Mtr. approx (Frontage) X 35 Mtr. approx (depth) at Survey No. 27/2, Mamarthupalayam, Periyasemur Village, Erode Taluk & District.

11. I humbly submit that this respondent had applied for a No Objection Certificate (NOC) from the district authorities on 11.01.2021. After receiving NOCs from various departments like Fire, Revenue, this respondent had received a No Objection Certificate from the District administration, Erode District on 26.02.2021, for setting up the new retail outlet, after the location of the subject retail outlet was duly verified and approved.

12. I humbly submit that this respondent had also received a license from the Petroleum and Safety Organisation (PESO) on 30.03.2021 vide license no: P/SC/TN/14/9380 (P495111).



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13. I humbly submit that this respondent, after obtaining all the necessary approvals/clearances as is required, commenced the construction for the said retail outlet and this respondent had commissioned the outlet and commenced the sales including nozzle sales from April of 2021.

14. I humbly submit that the present application has been filed with various allegations against the subject retail outlet, however, those allegations are neither the issue of pollution nor the issue of environmental degradation, which warrant the indulgence of this Hon'ble Tribunal under the provisions of the National Green Tribunal Act, 2020, however, the only allegation which can be decided by this Hon'ble Tribunal is that the subject retail outlet is established in violation to siting criteria prescribed by the Central Pollution Control Board in Clause "H" of the Office Memorandum No.B-13011/1/2019-20/AQM/10802-10847 dated 07.01.2020. In this regard, it is relevant to read the said Clause "H" and the same is as follows:-

"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 constraints 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."*

It is apparent from the above clause that the new Retail Outlets shall not be located under no case, within a radial distance of 30 meters from schools, hospitals and residential areas designated as per local laws.

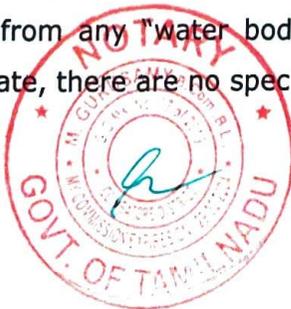


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15. I humbly submit that the subject retail outlet had obtained all the necessary permissions and clearances prior to its commencement and the said permissions were granted by the respective authorities only after duly verifying and inspecting the retail outlet, taking into consideration all the applicable conditions and regulations as would be required to be in compliance by the subject retail outlet. I humbly submit that as such, the allegation that the subject retail outlet falls near a Primary school and is in violation of the minimum distance prescribed by CPCB, is all false and denied. ***I submit that the present subject retail outlet, specifically the dispensing unit at the retail outlet, falls at a distance of about 36m from the school*** and as such the subject retail outlet falls well within the permissible limit of minimum distance that is required to be maintained by a new retail outlet, where the prescribed distance under no case, should be less than 30m from any school. ***The same is evident from Pages 4 and 7 of the report submitted by the Joint Committee, duly appointed by this Hon'ble Tribunal.***

16. I humbly submit that the allegation with respect to the retail outlet being in violation of G.O No. 256 of 2015, is all false and denied. The said G.O No. 256 of 2015, relied on by the applicant herein is only a draft regulation which has not come into force till date and as such the applicant's claim under a draft regulation only strengthens the fact that the applicant is acting with vested interest by making such bogus allegations and goes onto further question the maintainability of the present application.

17. I humbly submit that the allegation that the subject retail outlet is in violation to the norms prescribed by CPCB, with respect to the presence of a Water body within the same survey number and adjacent to the subject site are all false and denied. I humbly submit that there is not a single semblance of any word or rule relating to a minimum distance for a retail outlet from any "water body" under the norms prescribed by CPCB. As on date, there are no specific restrictions as to



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the presence of a retail outlet near a water body and as such, the allegation raised by the applicant is devoid of any merit and is liable to the imposition of costs, for making such imaginary claims before this Hon'ble Tribunal.

18. I humbly submit that The Tahsildar, Erode in his letter R.C No. 212/2021/A3 dated 18.01.2021, has submitted a report to District Revenue officer, where he has confirmed that there is no canal existing in Survey No. 27/2 and the same is expounded as hereunder :-

"No Koppu canal is seen in said land for getting irrigated. There is no waterway runs on said land, in this 0.17.0 Hec. Land, as 1342.59 Sq.Mr. extent becomes as the constructional land, no sort of hindrance occurs to irrigational canal or water distribution canal. And, there is no chance of affecting the groundwater level. There is no chance of the lands near by the land to which the licence is claimed to submerge in water or there is no chance of flooding the area. Also, there is no hindrance for discharge of sewage water."

19. I humbly submit that the allegations with respect to the violations of the IRC Norms, are all false and denied. The IRC norms are only recommendatory in nature and not mandatory, as is seen from the numerous judgements passed by the Hon'ble High Courts in this regard.

20. It is submitted that the allegation of violation to IRC Norms is not maintainable for the reason that the IRC norms are not applicable for the proposed site in light of the judgment 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.

21. It is further submitted that the same has been reiterated recently by the Hon'ble Madras High Court vide its order dated 11.03.2021 in W.P 35885 of 2019, the relevant portion is as follows:-

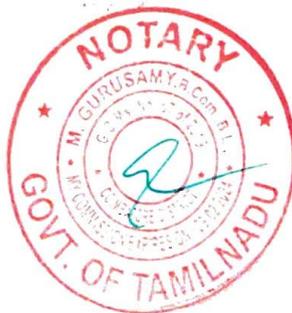


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"As seen from the above, the Indian Road Congress Guidelines have no statutory force as far as State of Tamil Nadu is concerned. The instructions given by the Assistant Divisional Engineer, Highways Department dated 08.11.2019 as well as instructions 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."

In the light of the above, it is clear that the applicant's allegation of violation of the IRC Guidelines is unfounded and baseless.

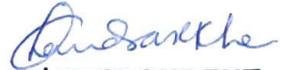
22. I humbly submit that this present applicant has filed this present application with vested and malafide interests, only with an intention to unnecessarily agitate and make false and baseless allegations as against this respondent and the same is liable to be condemned heavily by this Hon'ble Tribunal and it is requested that this Hon'ble Tribunal may impose exemplary costs on the applicant, for filing this bogus and highly malafide application, so as to prevent this applicant from filing such baseless applications and misusing the powers of this Hon'ble Tribunal.



S. Sankar
TERRITORY MANAGER (RETAIL)
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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 Erode on this the 10 day of August, 2021.



6th RESPONDENT
 TERRITORY MANAGER (RETAIL)
 BHARAT PETROLEUM CORPN. LTD
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VERIFICATION

I, K Chandrasekhar, Son of Mr. Venkateswarlu, aged 40 years, having address at BPCL Irugur TOP, Ravathur PO, Irugur Village, Coimbatore, working as Territory Manager Retail, do hereby verify that the contents of Paragraph Nos. 1 to 22 are true to the best of my knowledge and Paragraph Nos. 1 to 22 are believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Erode on this the **10** day of August, 2021.

Solemnly affirmed and signed
 before me at Coimbatore



10/8/2021
M. GURUSAMY, B.Com., B.Law
 ADVOCATE & NOTARY PUBLIC
 17, First Floor, Jawan Bhavan,
 COIMBATORE - 641 018,
 Cell : 98431 16766



6th RESPONDENT
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