

**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE AT CHENNAI**

ORIGINAL APPLICATION NO. 121 of 2023

P CHENNAIAH

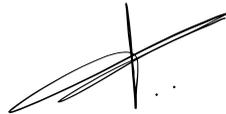
... Applicant

Vs

The Sub-Collector and Ors.

... Respondents

REPLY STATEMENT FILED BY THE 4th RESPONDENT



M/s. AAV PARTNERS

COUNSEL FOR 4th RESPONDENT

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**BEFORE THE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE AT CHENNAI**

ORIGINAL APPLICATION NO. 121 of 2023

P. Chennaiah
S/o. P Venkataramaiah,
2-147, Jangam Palli,
Kalikiri, Chittoor,
Andhra Pradesh – 517234.

... Applicant

Vs

1. The Sub Collector,
Office of Sub Collector,
Madanapalle,
Annamaiyya District,
Andhra Pradesh – 517330.
2. The District Fire Officer,
Opposite to Collector Office,
Masapet,
Rayachoti,
Annamaiyya District,
Andhra Pradesh – 516270.
3. The District Revenue Officer,
Masapet, Rayachoti,
Annamaiyya District,
Andhra Pradesh – 516270.
4. Senior Manager,
Hindustan Petroleum Corporation Ltd.,
Nellore Retail Regional Office,
D-No. 16-15-986-2, 2nd Floor,
Aarvee House, Children's Park Main Road,
Near Krishna Mandiram,
Nellore – 524002.



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Hindustan Petroleum Corporation Limited
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5. K. Shahjahan,
S/o. K Khadar,
Saheb,
Kalikiri Village & Mandal.

...Respondents

REPLY STATEMENT FILED BY THE 4th RESPONDENT

I, Sri. Moola Naga Satish S/o Sri M. Guneshwar Rao, aged about 41 years, working as Chief Regional Manager- Retail, Kadapa Retail Regional Office of M/s. Hindustan Petroleum Corporation Limited, do hereby solemnly affirm and sincerely state as follows :-

1. I humbly submit that I working as Chief Regional Manager- Retail and Duly Constituted Attorney, Kadapa Retail Regional Office of M/s. Hindustan Petroleum Corporation Limited, and as such, I am well acquainted with the facts and circumstances of the case and competent to swear this reply statement.
2. I humbly submit that the present application has been filed by the Applicant for the following relief :

"(i) Appoint an independent experts committee to ascertain the land with survey no. 342, 342/1 and Katta No. 1192 at Kalikiri Village & Mandal, Annamayya District, Madanavalli Division, Andhra Pradesh – 517234, which is very near to the kalikiri project that was misrepresented by the 5th respondent to the authorities.



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(ii) Direct the Respondent No. 1 to 3 to withdraw the "No Objection Certificate" and to take action according to law on the 5th Respondent for violating the Environment Pollution.

(iii) Direct the 5th Respondent to stop all further activities for the opening of the new retail outlet."

3. That nothing contained in this Reply Statement shall be construed as an admission of any statement or averment made in the present Original Application save and except what has specifically been admitted by the answering Respondent herein.
4. 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. 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 Original Application. The answering Respondent reserves his rights and liberty to file a further detailed Statement/Affidavit and additional documents if the situation so necessitates at a later stage.
6. That before traversing into the parawise reply of this Respondent with respect to the allegations raised in the



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application, it is necessary to set out the brief facts with respect to the subject retail outlet.

7. That this Respondent vide newspaper advertisement dt.25.11.2018 published a notification inviting applications for setting up retail outlet dealerships at various locations in the State of Andhra Pradesh including the impugned location - "*Within Kalikiri town limits on NH 71*" in Chittoor District" (presently Annamayya District) under OBC category.
8. That after completing the selection process, a Letter of Intent (LOI) dt.28.05.2022 was issued to the successful candidate Shri. Baba Saheb Kamuluri. Thereafter, as per procedure, this Respondent vide application No. NLRO/TSSR/ENGG dt.27.07.2022 applied for No-Objection Certificate (NOC) under Rule 144 of the Petroleum Rules, 2002, by filing appropriate application before the Joint Collector & Addl. District Magistrate, Annamayya District. In the meantime, the LOI Holder was granted with Building Permission by the Gram Panchayat, Kalikiri on 18.11.2022.
9. That in furtherance to the application, NOC under Rule 144 of the Petroleum Rules, 2002, vide Ref. C1/11102/2022 dt.31.12.2022 was issued to our Corporation by District Revenue Officer & Addl. District Magistrate, Annamayya District. It is submitted that the subject NOC has been issued after obtaining clearances and/ or recommendations from Police Dept., Revenue Dept., Fire Dept., Mandal Parishad Development Council etc. during the course of enquiry for grant of NOC. Accordingly, the following particulars have


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already been considered for grant of NOC by the district administration :

- a. Interest of public specially facilities like school, hospitals, proximity to places of public assembly and mitigating measures, if any, are provided;
- b. Conformity of proposal with local area development or planning;
- c. Genuineness of purpose;
- d. Any other matter of public safety.

10. Accordingly, upon receipt of the NOC, the LOI Holder commenced construction at the site, by incurring a cost of approximately Rs. 1.65 Crores in developing various facilities at the retail outlet such as compound wall, driveway, canopy, sales building, etc. Further, this Respondent has also invested approximately 24.25 Lacs in providing Underground tanks, Dispensing Units, connecting pipeline and other facilities at the retail outlet.

11. That petroleum products such as Motor Spirit (MS) and High Speed Diesel (HSD) are stored in underground tanks and are delivered to the dispensing units (DUs) installed above ground through connecting pipeline. It is humbly submitted that both the underground tanks and the connecting pipelines installed at the impugned retail outlet site are brand new and are conforming to approved make as per design manufacturer's specifications so as to withstand pressures as high as 0.5 Kg/cm² without any leakage. Further, all equipment installed at


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the site have been rigorously pressure tested, connecting Pipeline is pressure tested at 2.5Kg/cm². Mechanical Leak Detection System also installed between Tank & Dispensing Unit to avoid any leakage and as such, there can be no apprehension of any leakage or pollution of any water body.

12. That the present retail outlet is situated abutting NH-71 and therefore, is essential to cater to the fuel requirements of not only Kalikiri and surrounding villages but also to highway customers. It is submitted that there are only two other retail outlets of Govt. OMCs, one of IOCL and BPCL which are situated beyond 2 to 3 Kms of the present retail outlet site and the present application is only a motivated attempt to stall any competition by the rival contenders.
13. That the allegation made in the application that the establishment of the retail outlet will cause pollution due to spillage and will affect the environment and water bodies are all denied as false and frivolous. It is submitted that petroleum products are stored in underground tanks that are installed with ample safety measures and latest equipment which are capable of withstanding pressures as high as 0.5 Kg/ cm², connecting Pipeline is pressure tested at 5 Kg/cm², and as such, there is no possibility of any leakage or spillage as apprehended by the applicant. Mechanical Leak Detection system is also installed between the Underground tanks and Dispensing Units. The retail outlet and all the equipment installed are continuously monitored, pressure tested and checked to ensure that everything is within safe operation standard. This respondent is also ready and willing to install


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additional safety measures and directions as may be prescribed by this Hon'ble Tribunal.

14. That the guidelines issued by the Central Pollution Control Board (CPCB) dated 16.08.2021, relied on by the Applicant herein, does not attain or attach to itself, any statutory force and remains only to be recommendatory in nature.
15. That Section 5 of the Environment (Protection) Act 1986 (EP Act) empowers the Central Government to give directions in exercise of its powers and performance of its functions under the act. Such power was delegated to CPCB by the Central Government by way notification dated 27.02.1996. The power vested with CPCB is only to issue directions to regulate and compliance of the provisions of EP Act and its allied rules.
16. That though the said Guidelines of CPCB have been issued as an addendum to the Guidelines dated 07.01.2020, which was issued pursuant to the directions of the Principal Bench of this Hon'ble Tribunal vide its order dated 19.01.2019, in O.A. No. 86/2019: Gyanprakash @ Pappu Singh Vs UOI & Ors, however, the Guidelines have not been issued under any provisions of or made in reference to, any existing statute/s, for it attain a force of law.
17. That the said Guidelines being issued by a Central body, it has not adhered to the provisions of Article 77 of the Constitution of India and hence, the said guidelines cannot be said to have attained the force of a statute and are only mere expression of opinion, which are recommendatory in nature.


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18. That assuming without admitting that the CPCB guidelines have statutory force and have to be adhered to mandatorily, a bare perusal of the said guideline would go to show that there is no violation of such guidelines on the establishment of the subject retail outlet.
19. That the guidelines of CPCB dated 07.01.2020 and 16.08.2021 states as follows :

SITING CRITERIA

"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."

ADDENDUM TO THE CPCB GUIDELINES

"a) All the surface water bodies irrespective of utility shall be protected from any possible contamination. These include lakes, ponds, streams, rivers, wetlands, canals and creeks, as per revenue records. Retail Outlets shall not be located within


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a distance of 50 meters from the nearest point of water bodies. In case of streams and rivers, the distance shall be considered from firm banks/edge of river. The siting criterion is to be implemented for all new petrol pumps where construction by OMCs starts post the issuance of these guidelines.

b) Retail outlets coming within 50 meter to 100 meter from the nearest point of surface water body shall have secondary containment by way of double walled tanks or concrete protection walls around Underground Storage Tank (UST)“

20. It is submitted that as per ground measurements, the distance from the nearest point of the water body and the underground tank where the product is stored is at a distance of 35 metres. It is submitted that since the above guidelines are only recommendatory in nature, any environmental impact as envisaged by the CPCB, has to be considered only based on the circumstances of each case and the adverse impact the subject retail outlet is capable of producing to its immediate surroundings, for applicability of the siting criteria.
21. It is submitted that this Respondent, as additional safety measure, is proposing to monitor soil & water condition periodically. It is submitted that the retail outlet is installed with leak detecting mechanisms which would detect any leak and the supply of the dispensing units will also be immediately shut down and as such, there cannot be any impact due to leakage or spillage due to the operation of the retail outlet.


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22. It is submitted that even a perusal of the above guidelines, would make it evident that it is only recommendatory and that the guidelines do not absolutely prohibit all retail outlets near water bodies but only recommends a distance for the siting of the retail outlets and that the guidelines even permit the operation of retail outlet beyond 50m, with additional safety measures and as such, there is no rule or restriction or adverse impact on the functioning of a retail outlet near a water body, if sufficient cause is shown that all additional safety measures are in place and maintained.
23. It is submitted that this Respondent is in compliance with all the required statutory provisions and has obtained all the necessary permissions, for the establishment and operation of the subject retail outlet and has made substantial investments towards the same and the retail outlet is only towards the provision of an essential service to the general public. It is submitted that if the Applicant was aggrieved by the issuance of the NOC, the applicant ought to have exhausted his alternate remedy of filing an appeal under Rule 154 of the Petroleum Rules against the grant of or non-grant of said NOC and having failed to do so, has approached this Hon'ble tribunal, only on the instigation of rival contenders and hence, the application is liable to be dismissed.
24. The retail outlet is supposed to dispense petroleum product i.e. MS and HSD, which are essential commodity to the motoring public. Besides, huge amount of money is invested by the company for the construction of the retail outlet. If the present application filed by the applicant is allowed great


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inconvenience will be caused to the motoring public as well financial loss to public ex-chequer in case the present application is allowed.

25. That after knowing of all the above, the applicant has approached this Hon'ble Tribunal for vested interest and there is no public or environment interest is involved in the present issue, hence the present application is liable to be dismissed with huge cost.
26. That the applicant with an ill intention to stall the operation of the subject retail outlet, has filed the present application and the same is an abuse of process of law. Further, he is not entitled to any relief as claimed in the present application.
27. That this apart, this Respondent has obtained all the necessary clearances from the statutory authorities before the establishment and operation respectively of the subject retail outlet as mandated under law.
28. That, there will be no serious danger to the health and safety of the students and public residing in the surrounding area, since, this Respondent is taking necessary precautions and safety measures for the establishment of the subject retail outlet.
29. That the proposed retail outlet meets all safety norms as per PESO as well as CPCB for establishment of retail outlet. This respondent will take care of all safety norms, distances, in establishing and operating the retail outlet. All due precautions


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and efforts will be made in dealing with petroleum vapor as being done at thousands of retail outlets across the country.

30. That all additional safety precautions will be taken in accordance with the guidance of the authorities.
31. 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 on this the 8th day of January, 2024



COUNSEL FOR 4th RESPONDENT



4th RESPONDENT
MOOLA NAGA SATISH
Chief Regional Manager & Duty Constituted Attorney
Hindustan Petroleum Corporation Limited
Kadapa Retail Regional Office

VERIFICATION

I, Moola Naga Satish S/o Sri M. Guneshwar Rao, aged about 41 years working as Chief Regional Manager- Retail at Kadapa Retail Regional Office of M/s. Hindustan Petroleum Corporation Limited, do hereby verify that the contents of paras 1 to 31 are true to the best of my knowledge and paras 1 to 31 are believed to be true on legal advice and that I have not suppressed any material fact.

Verified at Kadapa on this the 8th day of January, 2024.



COUNSEL FOR 4th RESPONDENT



4th RESPONDENT
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Chief Regional Manager & Duty Constituted Attorney
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