

**Item No.02:**

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

**Original Application No. 101 of 2020 (SZ)**

*(Through Video Conference)*

**IN THE MATTER OF:**

सत्यमेव जयते

Kuruvila Abraham, Alapuzha  
Aged 57 years, Son of A.K. Abraham,  
Amprayil Anchil, Neerattupuram,  
Alapuzha 689 571.

...Applicant(s)

***Versus***

1. The Kerala State Pollution Control Board,  
Represented by its Member Secretary,  
Kerala State Pollution control Board,  
Pattom P.O. Thiruvananthapuram 695 004.
2. The Central pollution control Board,  
Rep. by its Chairman,  
Parivesh Bhawan, East Arjun Nagar,  
Delhi 110 032.
3. Juby Jacob, Koppapparampil House,  
Neerattupuram P.O.  
Thalavady, Alapuzha 689 571.
4. The Territory Manager (Retail)  
(Bharat Petroleum Corporation Limited,  
Irimpanam, Kochi 682 309.

...Respondent(s)

**Date of hearing: 08.07.2020.**

CORAM:

HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER  
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER

For Applicant(s):

Sri. P.B. Sahasranamam along with  
Sri. S. Sai Sathya Jith.

For Respondent(s):

Smt. Rema Smrithi for R1.  
Smt. P. Jeyalakshmi for R2.

**ORDER**

1. The above application has been filed by the applicant seeking the following reliefs:

- a. *Allow the application by directing the Central Pollution Control Board to issue appropriate direction to the Kerala State Pollution Control Board, to follow the guidelines for setting up of new petrol pumps, B-13011/1/2019-20/AQM dated 07.01.2020 to all such pumps to which no consent to operate has been issued.*
- b. *To direct the Kerala State Pollution Control Board not to issue any consent to operate to any petrol pumps which are established in derogation of the safe distance rule of fifty metres from residential buildings.*
- c. *To direct the Central Pollution Control Board to take into consideration the special features of Kerala State and conduct a study by appointing a*

Committee and prescribe more stringent distance rule for the establishment of petroleum outlets in Kerala State alone, within a reasonable time which this Hon'ble Tribunal thinks fit and necessary in the circumstances of the case.

2. It is alleged in the application that the 3<sup>rd</sup> respondent herein is trying to establish a petroleum outlet on the basis of the permission granted by the 4<sup>th</sup> respondent in violation of the guidelines given by the Central Pollution Control Board in this regard.
3. It is also alleged in the application that consent to establish was granted to the 3<sup>rd</sup> respondent, by the 1<sup>st</sup> respondent on 06.02.2020 as contemplated under Section 25 of Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 evidenced in Annexure A1.
4. According to the applicant, the Principal Bench of National Green Tribunal considered the question of establishing new petrol pump as per order dated 22.07.2019 in *Original Application No. 31 of 2019 and Original Application No. 86 of 2019 (K. Sathyadevan Verses Union of India and others and Gyanprakash @ PappuSingh Verses Union of India and others)* after considering report of the expert committee appointed by the Tribunal and issued certain directions to the Central Pollution Control Board to implement the

recommendations of the committee and issue necessary directions to the State Pollution Control Board in this regard and disposed of that application.

5. On the basis of the same the 2<sup>nd</sup> respondent had issued **Annexure- 2(3)** Guidelines dated 07.01.2020, following the same the 1st respondent had issued **Annexure A-3** Circular.
6. According to the applicant, the consent to establish was issued after passing the orders by the Principal Bench of National Green Tribunal, New Delhi and issuance of the guidelines by the Central Pollution Control Board. He along with some others filed a Writ Petition before the Hon'ble High Court as W.P. (C) No.10129/2020 seeking certain directions directing the Kerala State Pollution Control Board to consider the representation submitted by the applicants in that case before issuing consent to operate to the owner of the outlet and the Hon'ble High Court by judgement dated 22.05.2020 disposed of that Writ Petition directing the 2<sup>nd</sup> respondent Environmental Engineer, Alapuzha District within whose jurisdiction the outlet is going to be started to dispose of the same in accordance with the law after giving opportunity to the applicants as well as the proposed person who intend to start the outlet.

7. Since, the applicant felt, that he will not get justice from the Kerala State Pollution Control Board, he approached this Tribunal seeking the above relief.
8. When the matter came up for admission for hearing today through Video Conference. Sri. P.B. Sahasranamam along with Sri. S. Sai Sathya Jith appeared for the applicant. Smt. Rema Smrithi represented 1<sup>st</sup> respondent, Smt. P. Jeyalakshmi represented 2<sup>nd</sup> respondent. Since this Tribunal felt that the application can be disposed of by giving certain directions without going to the merit of the case, we have dispensed with notice to respondents 3 and 4.
9. The learned counsel for applicant submitted that the consent to establish itself was granted after the guidelines issued by the Central Pollution Control Board in this regard and after the orders of the National Green Tribunal, so that itself is bad. Further, the Kerala State Pollution Control Board is expected to consider the violations if any of non compliance of the conditions imposed in the consent to establish before issuing consent to operate.
10. On the other hand, the learned counsel appearing for the Kerala State Pollution Control Board submitted that there is no illegality to issuing the circular and when consent to operate is applied for same will be considered and pass appropriate orders in accordance with law only.

11. Further, the circular had been issued by the Kerala State Pollution Control Board pursuant to the guidelines given by the Central Pollution control Board making clear that this will be applicable only to the new applications filed for this purpose after the issuance of the circular only and the consent to establish was granted prior to that. The counsel appearing for the Central Pollution Control Board submitted that she wants to get some instructions from the 2<sup>nd</sup> respondent.
12. Since, we are not going to the merit of the case; we need not wait for any more time to dispose of the case.
13. Since, the applicant was not challenged **Annexure A1** consent to establish dated 06.02.2020, he is not entitled to challenge the validity of the same before this Tribunal by filing this application at this stage.
14. Further, the applicant along with some other persons has moved the Hon'ble High Court of Kerala by filing W.P. No. 10129/2020 (*Kuruwila Abraham, Alapuzha Vs the Kerala State Pollution Control Board and others.*) and the Honorable High Court had disposed that writ petition directing the Kerala State Pollution Control Board to pass appropriate orders in the representations filed by the applicants in accordance with law after giving opportunity to

the applicant as well as the proposed persons in who's favour consent to establish was granted namely 3<sup>rd</sup> respondent there in who is the 3<sup>rd</sup> respondent here in as well.

15. Since the Hon'ble High Court had considered the grievance of the applicant and disposed of the case with such directions, the applicant is not entitled to come before this Tribunal with a different prayer in order to achieve the same purpose.
16. Further, in view of the dictum laid on the decision reported in the *Tamil Nadu Pollution Control Board Vs Sterlite Industries (I) Limited and others* in Civil Appeal Nos. 4763-4764 of 2013 dated 18.02.2019 reported in AIR 2019 SC 1074, this Tribunal has no power to quash the circular issued by the Kerala State Pollution control Board.
17. Under such circumstances we feel it appropriate to dispose of this application by directing the Kerala State Pollution Control Board to dispose of the representation dated 30.04.2020 produced as Annexure P3 before the Hon'ble High Court of Kerala after complying with the directions issued by the Hon'ble High Court in the case mentioned above.
18. If the applicant files any representation before the Central Pollution Control Board seeking to modify the guidelines already

given in respect of establishing new petrol pumps in respect of the Kerala region with some scientific data then the Central Pollution Control Board is directed to consider that representation in consultation with the Ministry of Petroleum and Natural Gas (MoPNG) and Ministry of Environment, Forests and Climate Change (MoEF &CC) and dispose of that representation in accordance with law.

19. So, the application is disposed as follows:-

- (i) *The first respondent is directed to pass appropriate orders in the representation said to have been filed by the applicant produced and considered as Exhibit P3 dated 30.04.2020 and Exhibits P4 dated 03.03.2020, before the Hon'ble High court in the Writ Petition which has been directed to be disposed of by the Hon'ble High Court after complying with the directions issued by the Hon'ble High Court of Kerala in W.P.(C). No. 10129/2020 (Kuruwila Abraham & Ors. Vs. Kerala State Pollution Control Board & Ors.) dated 22.05.2020.*
- (ii) *If the applicant files any representation to the Central Pollution Control Board seeking their interventions for modifications of the guidelines for establishing new*

petrol pumps as per the directions of the National Green Tribunal, Principal Bench dated 07.01.2020, for establishing petroleum outlets in State of Kerala with scientific data's, then the Central Pollution Control Board is directed to consider and pass appropriate order in that representation in consultation with the Ministry of Petroleum and Natural Gas (MoPNG) and Ministry of Environment, Forests and Climate Change in accordance with law within a reasonable time.

20. With the above directions and observations the application is disposed off.
21. The Registry is directed to communicate this order to the Kerala State Pollution Control Board as well as the Central Pollution Control Board for their information and compliance.

.....J.M.  
**(Justice K. Ramakrishnan)**

.....E.M.  
**(Shri. Saibal Dasgupta)**

**O.A. 101/2020 (SZ)**  
**08th July 2020. Sr.**